

# EX-A Part 1

## Morton Pleadings



**Election to Proceed under the Alabama Rules for Expedited Civil Actions:** ☐ YES ☐ NO





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CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA  
JODY L. WISE, CLERK

**IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA**

**MICHAEL MORTON, et. al.,**

**Plaintiffs,**

**JURY TRIAL DEMANDED**

**vs.**

**Case No. CV-2021-\_\_\_\_\_**

**D.R. HORTON, INC., D.R. HORTON-BIRMINGHAM, BETHEL ENGINEERING, A, B, C, D, E, and/or F being those persons, corporations, firms or entities who were the engineers, designers, developers, contractors, subcontractors, agents, entities or other persons whose conduct caused or contributed to the deceptive acts by the Defendant's for which have caused damages to the Plaintiffs, G, H, I, J, K, and/or L, being those persons, corporations, firms or other entities responsible for creating, causing and/or continuing to commit a nuisance, trespass, negligence, or wantonness causing damage to the Plaintiffs, the identities of said fictitious parties being unknown to the Plaintiffs at present or if known, the identities as proper parties cannot be ascertained at this time, but will be substituted by amendment upon learning their true identity, unless otherwise stated, the word, Defendant shall include all Defendants, including those presently denominated as fictitious parties, Defendants.**

**Defendants.**

**COMPLAINT**

COMES NOW the Plaintiffs in the above-styled matter and files this Complaint against the Defendants as follows:

**PARTIES AND JURISDICTION**

1.
  - a. Michael Morton is over the age of 19 years and a resident citizen of Baldwin County, Alabama.
  - b. Lisa Morton is over the age of 19 years and a resident citizen of Baldwin County, Alabama.
  - c. Jeremy Smith is over the age of 19 years and a resident citizen of Baldwin County, Alabama.
  - d. Lindsey Smith is over the age of 19 years and a resident citizen of Baldwin County, Alabama.



- e. Robert Blauner is over the age of 19 years and a resident citizen of Baldwin County, Alabama.
- f. Pamela L. Blauner is over the age of 19 years and a resident citizen of Baldwin County, Alabama.
- g. Kirk Toth is over the age of 19 years and a resident citizen of Baldwin County, Alabama.
- h. Herbert Roberson is over the age of 19 years and a resident citizen of Baldwin County, Alabama.
- i. Amanda Roberson is over the age of 19 years and a resident citizen of Baldwin County, Alabama.
- j. Lance Cole Slater is over the age of 19 years and a resident citizen of Baldwin County, Alabama.
- k. Troy Williams is over the age of 19 years and a resident citizen of Baldwin County, Alabama.
- l. Josh Baker is over the age of 19 years and a resident citizen of Baldwin County, Alabama.
- m. Robert Stanley is over the age of 19 years and a resident citizen of Baldwin County, Alabama.
- n. Darbi Stanley is over the age of 19 years and a resident citizen of Baldwin County, Alabama.
- o. Shelby Douglas is over the age of 19 years and a resident citizen of Baldwin County, Alabama.
- p. John Bender is over the age of 19 years and a resident citizen of Baldwin County, Alabama.
- q. Tena Bender is over the age of 19 years and a resident citizen of Baldwin County, Alabama.



- r. Matthew Beal is over the age of 19 years and a resident citizen of Baldwin County, Alabama.
- s. Cheyenne Beal is over the age of 19 years and a resident citizen of Baldwin County, Alabama.
- t. Cecil Perry is over the age of 19 years and a resident citizen of Baldwin County, Alabama.
- u. Nancy Perry is over the age of 19 years and a resident citizen of Baldwin County, Alabama.
- v. Christopher Davis is over the age of 19 years and a resident citizen of Baldwin County, Alabama.
- w. Hannis Roberts is over the age of 19 years and a resident citizen of Baldwin County, Alabama.
- x. Carlis Lairson is over the age of 19 years and a resident citizen of Baldwin County, Alabama.
- y. Sheri Lairson is over the age of 19 years and a resident citizen of Baldwin County, Alabama.
- z. Jess Kalis is over the age of 19 years and a resident citizen of Baldwin County, Alabama.
- aa. Kathy Kalis is over the age of 19 years and a resident citizen of Baldwin County, Alabama.
- bb. Christi Dixon is over the age of 19 years and a resident citizen of Baldwin County, Alabama.
- cc. Andrew Ray Merriweather is over the age of 19 years and a resident citizen of Baldwin County, Alabama.
- dd. Heather Merriweather is over the age of 19 years and a resident citizen of Baldwin County, Alabama.



- ee. Geri Lynn McCane is over the age of 19 years and a resident citizen of Baldwin County, Alabama.
- ff. Edward Mitchell is over the age of 19 years and a resident citizen of Baldwin County, Alabama.
- gg. Sager J. Hamdan is over the age of 19 years and a resident citizen of Baldwin County, Alabama.
- hh. Roy Ashton is over the age of 19 years and a resident citizen of Baldwin County, Alabama.
- ii. Michelle Ashton is over the age of 19 years and a resident citizen of Baldwin County, Alabama.
- jj. Sean Garrison is over the age of 19 years and a resident citizen of Baldwin County, Alabama.
- kk. Patrick Callaghan is over the age of 19 years and a resident citizen of Baldwin County, Alabama.
- ll. Liz Callaghan is over the age of 19 years and a resident citizen of Baldwin County, Alabama.
- mm. Lauren Sumrall is over the age of 19 years and a resident citizen of Baldwin County, Alabama.
- nn. Nicholas Hoots is over the age of 19 years and a resident citizen of Baldwin County, Alabama.
- oo. Dan Hodson is over the age of 19 years and a resident citizen of Baldwin County, Alabama.
- pp. Janet White is over the age of 19 years and a resident citizen of Baldwin County, Alabama.
- qq. Heidi Davis is over the age of 19 years and a resident citizen of Baldwin County, Alabama.



- rr. Nicholos West is over the age of 19 years and a resident citizen of Baldwin County, Alabama.
- ss. Brenda Lynn Hinote is over the age of 19 years and a resident citizen of Baldwin County, Alabama.
- tt. Roy Settles is over the age of 19 years and a resident citizen of Baldwin County, Alabama.
- uu. Adam Cooley is over the age of 19 years and a resident citizen of Baldwin County, Alabama.
- vv. Mark Vontroba is over the age of 19 years and a resident citizen of Baldwin County, Alabama.
- ww. Christopher Lee Sanders is over the age of 19 years and a resident citizen of Baldwin County, Alabama.
- xx. Chris Butler is over the age of 19 years and a resident citizen of Baldwin County, Alabama.
- yy. Crystal Butler is over the age of 19 years and a resident citizen of Baldwin County, Alabama.
- zz. George Messer is over the age of 19 years and a resident citizen of Baldwin County, Alabama.
- aaa. Kathleen Messer is over the age of 19 years and a resident citizen of Baldwin County, Alabama.
- bbb. Brent Parnell is over the age of 19 years and a resident citizen of Baldwin County, Alabama.
- ccc. Tammy Parnell is over the age of 19 years and a resident citizen of Baldwin County, Alabama.
- ddd. James Stewart is over the age of 19 years and a resident citizen of Baldwin County, Alabama.



eee. James Funderburg is over the age of 19 years and a resident citizen of Baldwin County, Alabama.

fff. Ariel Haley Funderburg is over the age of 19 years and a resident citizen of Baldwin County, Alabama.

ggg. Nada Blamachan Permanand is over the age of 19 years and a resident citizen of Baldwin County, Alabama.

hhh. Tim Kent is over the age of 19 years and a resident citizen of Baldwin County, Alabama.

iii. Stacie Kent is over the age of 19 years and a resident citizen of Baldwin County, Alabama.

jjj. Timothy Gier is over the age of 19 years and a resident citizen of Baldwin County, Alabama.

kkk. Michelle Gier is over the age of 19 years and a resident citizen of Baldwin County, Alabama.

lll. Rick Sullivan is over the age of 19 years and a resident citizen of Baldwin County, Alabama.

mmm. Melissa Sullivan is over the age of 19 years and a resident citizen of Baldwin County, Alabama.

nnn. Daniel Owsley is over the age of 19 years and a resident citizen of Baldwin County, Alabama.

ooo. Christopher Taylor is over the age of 19 years and a resident citizen of Baldwin County, Alabama.

ppp. Sharron Mattison is over the age of 19 years and a resident citizen of Baldwin County, Alabama.

qqq. David Harrison is over the age of 19 years and a resident citizen of Baldwin County, Alabama.

rrr. Roxanne Harrison is over the age of 19 years and a resident citizen of Baldwin County, Alabama.



sss. Sara Winchester is over the age of 19 years and a resident citizen of Baldwin County, Alabama.

ttt. Terrie Owens is over the age of 19 years and a resident citizen of Baldwin County, Alabama.

uuu. David Owens is over the age of 19 years and a resident citizen of Baldwin County, Alabama.

vvv. John Bogl is over the age of 19 years and a resident citizen of Baldwin County, Alabama.

www. Tiffany Bogl is over the age of 19 years and a resident citizen of Baldwin County, Alabama.

xxx. Steve Wiger is over the age of 19 years and a resident citizen of Baldwin County, Alabama.

yyy. Jerry Maddox is over the age of 19 years and a resident citizen of Baldwin County, Alabama.

zzz. Loan M. Nguyen is over the age of 19 years and a resident citizen of Baldwin County, Alabama.

aaaa. James White is over the age of 19 years and a resident citizen of Baldwin County, Alabama.

bbbb. Tara White is over the age of 19 years and a resident citizen of Baldwin County, Alabama.

cccc. Carlton Washington is over the age of 19 years and a resident citizen of Baldwin County, Alabama.

dddd. Cody Miles is over the age of 19 years and a resident citizen of Baldwin County, Alabama.

eeee. Victoria Miles Reed is over the age of 19 years and a resident citizen of Baldwin County, Alabama.

ffff. Benjamin White is over the age of 19 years and a resident citizen of Baldwin County, Alabama.



gggg. Jacob Van Blake is over the age of 19 years and a resident citizen of Baldwin County, Alabama.

hhhh. Richard Harper is over the age of 19 years and a resident citizen of Baldwin County, Alabama.

iiii. Cynthia Hintz is over the age of 19 years and a resident citizen of Baldwin County, Alabama.

jjjj. Todd Campbell is over the age of 19 years and a resident citizen of Baldwin County, Alabama.

2. D.R. Horton, Inc. is a foreign corporation conducting business in Baldwin County, Alabama.
3. D.R. Horton, Inc. – Birmingham is an Alabama Corporation conducting business in Baldwin County, Alabama.
4. Bethel Engineering, Inc. is an Alabama Corporation conducting business in Baldwin County, Alabama.
5. Defendants, A, B, C, D, E, and/or F being those persons, corporations, firms or entities who were the engineers, designers, developers, contractors, subcontractors, agents, entities or other persons whose conduct caused or contributed to the deceptive acts by the Defendant's for which have caused damages to the Plaintiffs and whose identity or identities are not currently known to the Plaintiffs and are not readily ascertainable at this time, but will be substituted by amendment to this Complaint, should each action become necessary or appropriate, as provided for in Rule 9(h) of the *Alabama Rules of Civil Procedure*.
6. Defendants, G, H, I, J, K, and/or L, being those persons, corporations, firms or other entities responsible for creating, causing and/or continuing to commit a nuisance, trespass, negligence, or wantonness causing damage to the Plaintiffs, and whose identity or identities are not currently known to the Plaintiffs and are not readily ascertainable at this time, but will be substituted by amendment to this Complaint, should each action become necessary or appropriate, as provided for in Rule 9(h) of the *Alabama Rules of Civil Procedure*.
7. The amount in controversy exceeds the jurisdictional limits of this Honorable Court, exclusive of interest and costs.



### FACTUAL BACKGROUND

8. D.R. Horton, Inc. and D.R. Horton, Inc. – Birmingham are residential construction companies who develop neighborhoods and build individual residential homes for direct sale in Baldwin County, Alabama. D.R. Horton, Inc. and D.R. Horton, Inc. – Birmingham, constructed the homes of each Plaintiff in this action.
9. Bethel Engineering, Inc., upon information and belief, is the engineering entity who approved plans, supervised the construction project with respect to Institute for Business and Homes Safety (IBHS) Fortified Home Technical Requirements, in an effort to have the home receive a Gold Fortified certificate pursuant to IBHS Fortified Technical Requirements.
10. The address for the residential homes of the Plaintiffs are as follows:

408 Pogue Street	Gulf Shores	AL	36542
440 Pogue Street	Gulf Shores	AL	36542
443 Pogue Street	Gulf Shores	AL	36542
8048 Irwin Loop	Daphne	AL	36526
21880 Yosemite Blvd	Fairhope	AL	36532
13047 Hatchet Creek Ave	Fairhope	AL	36532
20968 Yosemite Blvd	Fairhope	AL	36532
21638 Gullfoss St	Fairhope	AL	36532
8053 Pickwick Dr.	Foley	AL	36535
8073 Pickwick Dr.	Foley	AL	36535
18039 Lewis Smith Dr.	Foley	AL	36535
18057 Lewis Smith Dr.	Foley	AL	36535
7932 Pickwick Dr.	Foley	AL	36535
17316 Lewis Smith Dr.	Foley	AL	36535
17964 Lewis Smith Dr.	Foley	AL	36535
17965 Lewis Smith Dr.	Foley	AL	36535
17848 Lewis Smith Dr.	Foley	AL	36535
27874 Smarty Jones Cr.	Daphne	AL	36526
24147 Harvester Dr.	Loxley	AL	36551
24203 Harvester Dr.	Loxley	AL	36551
24082 Harvester Dr.	Loxley	AL	36551
24286 Harvester Dr.	Loxley	AL	36551
24342 Harvester Dr.	Loxley	AL	36551



24644 Spectacular Bid Loop	Daphne	AL	36526
16620 Walstan Drive	Loxley	AL	36551
11721 Agora Drive	Daphne	AL	36526
17729 Lewis Smith Dr.	Foley	AL	36535
24222 Harvester Dr.	Loxley	AL	36551
336 Nandina Loop	Fairhope	AL	36532
24314 Harvester Dr.	Loxley	AL	36551
24294 Harvester Dr.	Loxley	AL	36551
16704 Walston Dr.	Loxley	AL	36551
332 Nandina Loop	Fairhope	AL	36532
339 Nandina Loop	Fairhope	AL	36532
17071 Lanier	Foley	AL	36535
18065 Lewis Smith	Foley	AL	36535
17998 Lewis Smith	Foley	AL	36535
17426 Lewis Smith	Foley	AL	36535
17449 Harding Drive	Foley	AL	36535
18049 Lewis Smith	Foley	AL	36535
18357 Lewis Smith	Foley	AL	36535
8065 Pickwick	Foley	AL	36535
1916 Hogan Dr.	Gulf Shores	AL	36542
31601 Memphis Loop	Spanish Fort	AL	36527
12820 Warbler	Daphne	AL	36526
17081 Lanier Blvd	Foley	AL	36535
17695 Lewis Smith Dr.	Foley	AL	36535
9963 Volterra	Daphne	AL	36526
9723 Bellaton Ave.	Daphne	AL	36526
24378 Chantilly Lane	Daphne	AL	36526
216 Rhineheart Lane	Foley	AL	36535
9944 Volterra Ave.	Daphne	AL	36526
9474 Bella Dr.	Daphne	AL	36526
11800 Alabaster Dr.	Daphne	AL	36526
31940 Calder Ct.	Daphne	AL	36526
11680 Alameda Ct.	Daphne	AL	36526
9456 Amethyst Dr.	Daphne	AL	36526
112 Landing Road	Foley	AL	36535
24365 Harvester Drive	Loxley	AL	36551
24276 Harvester Drive	Loxley	AL	36551



13157 Sanderling	Daphne	AL	36526
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11. The Plaintiffs have all taken possession of their homes within the statute of limitations period for all available causes of action. Furthermore, the Plaintiffs all became aware of the deceptive and/or fraudulent activities being the basis of this lawsuit within one (1) year of today's date.
12. D.R. Horton, Inc., D.R. Horton Inc., - Birmingham, and Bethel Engineering, Inc. represented to the Plaintiffs that they took pride in their work and would build a quality home with good workmanship, demonstrating this point by providing information of prior construction and representations of what their completed construction would look like.
13. D.R. Horton, Inc., D.R. Horton Inc., - Birmingham, and Bethel Engineering, Inc. represented to the Plaintiffs that the homes they were purchasing would be Gold Fortified, as described in the Institute for Business and Home Safety (IBHS) Fortified Home Technical Home Requirements.
14. The Plaintiffs were provided with a certificate from IBHS stating that their homes met the standards of Gold Fortified, as provided in the IBHS Fortified Home Technical Requirements. This certificate was provided pursuant to acts and submissions made by D.R. Horton, Inc., D.R. Horton Inc., - Birmingham, and Bethel Engineering, Inc., or agents of D.R. Horton, Inc., D.R. Horton Inc., - Birmingham, and Bethel Engineering, Inc.
15. The representations and actions by D.R. Horton, Inc., D.R. Horton Inc., - Birmingham, and Bethel Engineering, Inc., or agents of D.R. Horton, Inc., D.R. Horton Inc., - Birmingham, and Bethel Engineering, Inc., have (1) caused confusion and misunderstanding as to the certification of their homes, (2) created a representation that their homes have sponsorship, characteristics, uses, benefits and qualities that they do not have, and (3) created a representation that their homes are of a particular standards, quality or grade, or that their homes are of a particular style or model, despite being that of another.
16. The Plaintiffs Homes do not meet the Gold Fortified Technical Home Requirements for the following purposes:
  - a. Installed windows are non-impact, nor do they meet water and air filtration ratings;
  - b. Roof bracings and strappings are deficient;



- c. Fasteners for roof underlayments are deficient;
  - d. The Foundations have multiple issues which are as follows:
    - i. The foundation sites are not properly prepped, or graded;
    - ii. In many homes, the foundation mesh, or welded wire fabric (WWF), is not properly placed;
    - iii. failure to maintain consistent slab thickness;
    - iv. lack of base material compaction;
    - v. poor base material elevation controls; and
    - vi. improperly installed foundation anchors and post-installed repair anchors;
  - e. Fasteners for vinyl siding are deficient;
  - f. Bracing of gable end walls are deficient; and
  - g. Varying other Baldwin County and municipal county code violations which would inhibit the homes from becoming code compliant (for example, weep holes not being adequately placed, foundation being too low to grade, flashing not being installed, etc.).
17. The Plaintiff's trusted D.R. Horton, Inc., D.R. Horton Inc., - Birmingham, and Bethel Engineering, Inc., or agents of D.R. Horton, Inc., D.R. Horton Inc., - Birmingham, and Bethel Engineering, Inc., and relied upon their statement and/or representations.
  18. The Plaintiffs have suffered significant damages in that their homes are not as valuable as they were led to believe, a fact that is made worse when you consider that many of the Plaintiffs have a mortgage through an entity that D.R. Horton, Inc., or a subsidiary of D.R. Horton, Inc., has ownership in, that is more than the current value of the homes. Additionally, in order to correct the issue, there are significant expenses in the form of construction costs to have the homes meet the standards provided in the IBHS Gold Fortified Technical Requirements.
  19. Prior to the filing of this action, the Plaintiffs have met all the statutory requirements designated in Code of Alabama, 1975, Section 8-19-1, *et. seq.*, to include those that give grounds for a private right of action in Code of Alabama, 1975, Section 8-19-10.



Attached and incorporated hereto is the Notice letter provided pursuant to Code of Alabama, 1975, Section 8-19-10(e) (See Exhibit 1, which is attached and incorporated hereto).

20. In addition to the above, there are significant construction defects and areas where the Plaintiffs homes fail to meet the County or Municipal Building Codes applicable.
21. D.R. Horton, Inc., D.R. Horton Inc., - Birmingham, or their agents, hire employees to conduct various levels of work related to the construction of their homes and then supervise said employees during the duration of the construction projects. The construction of the Plaintiffs homes that pertains to this is not acceptable as noted in the above paragraphs.
22. Bethel Engineering, Inc., or their agents, hire employees to conduct various levels of work related to the IBHS Gold Fortified Technical Requirements and the submissions necessary to obtain said Gold Fortified certificates, they then supervise said employees while conducting the plans reviews, inspections and submissions in order to receive the Gold Fortified Certificates. The work conducted on Bethel Engineering Inc. behalf pertaining to the Plaintiffs homes is not acceptable as noted in the above paragraphs.
23. Upon information and belief, D.R. Horton, Inc. and D.R. Horton, Inc. – Birmingham have constructed the Plaintiffs homes in such a manner to where the water drainage is not draining as designed, and is in fact either not draining, leaving standing water in the yard, or draining to the homes, creating water intrusion issues and/or water nuisance issues.
24. The Plaintiffs have suffered damages as a result of water accumulation, accretion, intrusion, etc. in that their property value has decreased and/or they will incur expenses in an effort to have the water diverted in a different direction or to the intended drainage areas.
25. The Plaintiffs have suffered mental anguish and emotional distress as a result of the actions of D.R. Horton, Inc., D.R. Horton, Inc. – Birmingham, and Bethel Engineering, Inc., or agents of D.R. Horton, Inc., D.R. Horton Inc., - Birmingham, and Bethel Engineering, Inc.



**COUNT I**  
**DECEPTIVE TRADE PRACTICE**  
**(Code of Alabama, 1975, Section 8-19-1, et. seq.)**

**Against D.R. Horton, Inc., D.R. Horton, Inc. – Birmingham, and Bethel Engineering, Inc.**

26. The Plaintiffs incorporate the foregoing paragraphs as though fully set forth herein.
27. D.R. Horton, Inc., D.R. Horton Inc., - Birmingham, and Bethel Engineering, Inc., or agents of D.R. Horton, Inc., D.R. Horton Inc., - Birmingham, and Bethel Engineering, Inc., have (1) caused confusion and misunderstanding as to the certification of their homes, (2) created a representation that their homes have sponsorship, characteristics, uses, benefits and qualities that they do not have, and (3) created a representation that their homes are of a particular standards, quality or grade, or that their homes are of a particular style or model, despite being that of another.
28. In doing so, D.R. Horton, Inc., D.R. Horton Inc., - Birmingham, and Bethel Engineering, Inc., or agents of D.R. Horton, Inc., D.R. Horton Inc., - Birmingham, and Bethel Engineering, Inc., are in violation of Code of Alabama, 1975 Section 8-19-5.
29. A demand was made in accordance with Code of Alabama, 1975 Section 8-19-10(e), no tender has been extended by the Defendants (See Exhibit 1, which is attached and incorporated hereto).
30. As a proximate result thereof, the Plaintiffs have suffered damages for the loss of value to their home, repair costs, mental anguish and emotional distress.

WHEREFORE, the Plaintiffs respectfully demand judgment against the Defendants for all remedies available under Code of Alabama, 1975 Section 8-19-10(a)(1-3), to include actual damages, mental anguish, courts discretionary damages (up to three (3) times actual damages), and costs of the action, to include reasonable attorney's fees, and any other relief as deemed just and proper.

**COUNT II**  
**INJUNCTION**

**Against D.R. Horton, Inc., D.R. Horton, Inc. – Birmingham, and Bethel Engineering, Inc.**

31. The Plaintiffs incorporate the foregoing paragraphs as though fully set forth herein.
32. Pursuant to authority provided in Code of Alabama, 1975 Section 8-19-1, et. seq. the Plaintiffs would ask the Court to enjoin the Defendants from further construction and/or engineering practices during the time in which they are non-complaint with Code of Alabama, 1975 Section 8-19-1, et. seq., or until this lawsuit has come to



resolution on the matters. Any damages for which D.R. Horton, Inc., D.R. Horton Inc., - Birmingham, and Bethel Engineering, Inc. may incur are outweighed by the continued actions against the Plaintiffs and other unknowing parties willing to purchase a home from D.R. Horton, Inc., D.R. Horton Inc., - Birmingham, and Bethel Engineering, Inc. in Baldwin County, Alabama.

33. Accordingly, an Order from this Honorable Court requiring an Injunction will serve no public disservice, in fact, quite the opposite would be true.

WHEREFORE, the Plaintiff prays the Court to provide the following relief:

- a. That this Court issue a permanent injunction restraining and enjoining D.R. Horton, Inc., D.R. Horton Inc., - Birmingham, and Bethel Engineering, Inc. from:
  - i. Acting in a manner that would violate Code of Alabama, 1975 Section 8-19-1, et. seq.;
  - ii. Developing and Constructing homes, and/or home sites in Baldwin County, Alabama; and
  - iii. Certifying, supervising, and/or submitting materials to IBHS in an effort to obtain IBHS Gold Fortified certificates for residential home owners in Baldwin County, Alabama.
- b. That this Court assess all damages to which the Plaintiffs are entitled, as stated in Code of Alabama, 1975 Section 8-19-10(a)(1-3) in the Court's discretion in equity and at law; and
- c. Any further relief the Court deems appropriate under the circumstances.

**COUNT III**  
**FRAUD**

**AS AN ALTERNATIVE COUNT TO COUNT I**

**Against D.R. Horton, Inc., D.R. Horton, Inc. – Birmingham, and Bethel Engineering, Inc.**

34. The Plaintiffs incorporate the foregoing paragraphs as though fully set forth herein.
35. D.R. Horton, Inc., D.R. Horton Inc., - Birmingham, and Bethel Engineering, Inc., or agents of D.R. Horton, Inc., D.R. Horton Inc., - Birmingham, and Bethel Engineering, Inc., made representations to the Plaintiffs that their residential homes meet the Fortified Home Technical Requirements for Gold Fortified, that the homes were in



compliance with the municipal and county building codes, and were the product of quality workmanship,

36. The representations made by D.R. Horton, Inc., D.R. Horton Inc., - Birmingham, and Bethel Engineering, Inc., or agents of D.R. Horton, Inc., D.R. Horton Inc., - Birmingham, and Bethel Engineering, Inc. are false.
37. The Plaintiff's relied upon the representations of D.R. Horton, Inc., D.R. Horton Inc., - Birmingham, and Bethel Engineering, Inc., or agents of D.R. Horton, Inc., D.R. Horton Inc., - Birmingham, and Bethel Engineering, Inc.,
38. The Plaintiff's have suffered damages, to include financial and emotional damages, as a result of the false representations.

WHEREFORE, the Plaintiffs respectfully demand judgment against the Defendants, to include compensatory, mental anguish and punitive damages, plus interest and costs within the jurisdiction limits of this Court, and any other relief as deemed just and proper.

**COUNTY IV**  
**NEGLIGENCE**

**Against D.R. Horton, Inc., and D.R. Horton, Inc. – Birmingham**

39. The Plaintiffs incorporate the foregoing paragraphs as though fully set forth herein.
40. D.R. Horton, Inc., and D.R. Horton Inc., - Birmingham owed a duty to the Plaintiffs.
41. D.R. Horton, Inc., and D.R. Horton Inc., - Birmingham, or agents of D.R. Horton, Inc., and D.R. Horton Inc., - Birmingham, breached said duty by negligently constructing the home.
42. As a proximate result:
  - a. The Plaintiffs received windows of a lesser quality than that negotiated.
  - b. Roof bracings and strappings are deficient;
  - c. Fasteners for roof underlayments are deficient;
  - d. The Foundations have multiple issues which are as follows:
    - i. The foundation sites are not properly prepped, or graded;



- ii. In many homes, the foundation mesh, or welded wire fabric (WWF), is not properly placed;
  - iii. failure to maintain consistent slab thickness;
  - iv. lack of base material compaction;
  - v. poor base material elevation controls; and
  - vi. improperly installed foundation anchors and post-installed repair anchors;
- e. Fasteners for vinyl siding are deficient;
- f. Bracing of gable end walls are deficient;
- g. Varying other Baldwin County and municipal county code violations which would inhibit the homes from becoming code compliant (for example, weep holes not being adequately placed, foundation being too low to grade, flashing not being installed, or installed correctly, protection/barrier wrap (Tyvek wrap) not properly secured or torn, etc.);
- h. The site grading is subpar to the extent that water does not drain as designed.
43. As a proximate result thereof, the Plaintiffs have suffered damages for the loss of value to their home, mental anguish and emotional distress.

WHEREFORE, the Plaintiffs respectfully demand judgment against D.R. Horton, Inc., and D.R. Horton Inc., - Birmingham, to include compensatory damages and mental anguish, plus interest and costs within the jurisdiction limits of this Court, and any other relief as deemed just and proper.

**COUNT V**  
**NEGLIGENT HIRING, TRAINING, AND SUPERVISION**  
**Against D.R. Horton, Inc., and D.R. Horton, Inc. – Birmingham**

44. The Plaintiffs incorporates the foregoing paragraphs as though fully set forth herein.
45. D.R. Horton, Inc., and D.R. Horton Inc., - Birmingham, employed agents and/or employees in the construction of the residential homes of the Plaintiffs.
46. The employees were negligent in the construction of the residential homes of the Plaintiffs, to wit:



- a. The Plaintiffs received windows of a lesser quality than that negotiated.
  - b. Roof bracings and strappings are deficient;
  - c. Fasteners for roof underlayments are deficient;
  - d. The Foundations have multiple issues which are as follows:
    - i. The foundation sites are not properly prepped, or graded;
    - ii. In many homes, the foundation mesh, or welded wire fabric (WWF), is not properly placed;
    - iii. failure to maintain consistent slab thickness;
    - iv. lack of base material compaction;
    - v. poor base material elevation controls; and
    - vi. improperly installed foundation anchors and post-installed repair anchors;
  - e. Fasteners for vinyl siding are deficient;
  - f. Bracing of gable end walls are deficient;
  - g. Varying other Baldwin County and municipal county code violations which would inhibit the homes from becoming code compliant (for example, weep holes not being adequately placed, foundation being too low to grade, flashing not being installed, or installed correctly, protection/barrier wrap (Tyvek wrap) not properly secured or torn, etc.);
  - h. The site grading is subpar to the extent that water does not drain as designed.
47. D.R. Horton, Inc. and D.R. Horton, Inc. - Birmingham, was aware of said negligent construction work, or should have been aware by exercising reasonable care.
48. D.R. Horton, Inc. and D.R. Horton, Inc. - Birmingham failed to exercise such reasonable care.
49. As a proximate result thereof, the Plaintiffs have suffered damages for the loss of value to their home, mental anguish and emotional distress.



WHEREFORE, the Plaintiffs respectfully demand judgment against D.R. Horton, Inc., and D.R. Horton Inc., - Birmingham, to include compensatory damages and mental anguish, plus interest and costs within the jurisdiction limits of this Court, and any other relief as deemed just and proper.

**COUNT VI**  
**WANTONNESS**

**Against D.R. Horton, Inc., and D.R. Horton, Inc. – Birmingham**

50. The Plaintiffs incorporate the foregoing paragraphs as though fully set forth herein.
51. The D.R. Horton, Inc. and D.R. Horton, Inc. - Birmingham wantonly constructed the Plaintiffs homes.
52. As a proximate result:
  - a. The Plaintiffs received windows of a lesser quality than that negotiated.
  - b. Roof bracings and strappings are deficient;
  - c. Fasteners for roof underlayments are deficient;
  - d. The Foundations have multiple issues which are as follows:
    - i. The foundation sites are not properly prepped, or graded;
    - ii. In many homes, the foundation mesh, or welded wire fabric (WWF), is not properly placed;
    - iii. failure to maintain consistent slab thickness;
    - iv. lack of base material compaction;
    - v. poor base material elevation controls; and
    - vi. improperly installed foundation anchors and post-installed repair anchors;
  - e. Fasteners for vinyl siding are deficient;
  - f. Bracing of gable end walls are deficient;
  - g. Varying other Baldwin County and municipal county code violations which would inhibit the homes from becoming code compliant (for example, weep holes



not being adequately placed, foundation being too low to grade, flashing not being installed, or installed correctly, protection/barrier wrap (Tyvek wrap) not properly secured or torn, etc.);

h. The site grading is subpar to the extent that water does not drain as designed.

53. As a proximate result thereof, the Plaintiffs have suffered damages for the loss of value to their home, mental anguish and emotional distress.

WHEREFORE, the Plaintiffs respectfully demand judgment against D.R. Horton, Inc., and D.R. Horton Inc., - Birmingham, to include compensatory, mental anguish and punitive damages, plus interest and costs within the jurisdiction limits of this Court, and any other relief as deemed just and proper.

**COUNT VII**  
**NEGLIGENCE**  
**Against Bethel Engineering, Inc.**

54. The Plaintiffs incorporate the foregoing paragraphs as though fully set forth herein.
55. Bethel Engineering, Inc., owed a duty to the Plaintiffs.
56. Bethel Engineering, Inc., or agents of Bethel Engineering, Inc., breached said duty by negligently certifying plans, supervising the construction project, submitting materials to IBHS for Gold Fortification certification, and/or inspecting the Plaintiffs homes to ensure the homes meet the requirements for Gold Fortified standards in accordance with the IBHS Fortified Home Technical Requirements.
57. As a proximate result, the Plaintiffs received a home that does not meet the Gold Fortified standards in accordance with the IBHS Fortified Home Technical Requirements.
58. As a proximate result thereof, the Plaintiffs have suffered damages for the loss of value to their home, mental anguish and emotional distress.

WHEREFORE, the Plaintiffs respectfully demand judgment against Bethel Engineering, Inc. to include compensatory damages and mental anguish, plus interest and costs within the jurisdiction limits of this Court, and any other relief as deemed just and proper.

**COUNT VIII**  
**NEGLIGENT HIRING, TRAINING, AND SUPERVISION**  
**Against Bethel Engineering, Inc.**

59. The Plaintiffs incorporates the foregoing paragraphs as though fully set forth herein.



60. Bethel Engineering, Inc., employed agents and/or employees to certify plans, supervise the construction project, submitting materials to IBHS for Gold Fortification certification, and/or inspect the Plaintiffs homes to ensure the homes meet the requirements for Gold Fortified standards in accordance with the IBHS Fortified Home Technical Requirements.
61. The employees were negligent in certifying plans, supervising the construction project, submitting materials to IBHS for Gold Fortification certification, and/or inspecting the Plaintiffs homes to ensure the homes meet the requirements for Gold Fortified standards in accordance with the IBHS Fortified Home Technical Requirements.
62. Bethel Engineering, Inc. was aware of said negligence, or should have been aware by exercising reasonable care.
63. Bethel Engineering, Inc. failed to exercise such reasonable care.
64. As a proximate result thereof, the Plaintiffs have suffered damages for the loss of value to their home, mental anguish and emotional distress.

WHEREFORE, the Plaintiffs respectfully demand judgment against Bethel Engineering, Inc., to include compensatory damages and mental anguish, plus interest and costs within the jurisdiction limits of this Court, and any other relief as deemed just and proper.

**COUNT IX**  
**WANTONNESS**

**Against D.R. Horton, Inc., and D.R. Horton, Inc. – Birmingham**

65. The Plaintiffs incorporate the foregoing paragraphs as though fully set forth herein.
66. Bethel Engineering, Inc., owed a duty to the Plaintiffs.
67. Bethel Engineering, Inc., or agents of Bethel Engineering, Inc., wantonly certified plans, supervised the construction project, submitted materials to IBHS for Gold Fortification certification, and/or inspected the Plaintiffs homes to ensure the homes meet the requirements for Gold Fortified standards in accordance with the IBHS Fortified Home Technical Requirements.
68. As a proximate result, the Plaintiffs received a home that does not meet the Gold Fortified standards in accordance with the IBHS Fortified Home Technical Requirements.



69. As a proximate result thereof, the Plaintiffs have suffered damages for the loss of value to their home, mental anguish and emotional distress.
70. As a proximate result thereof, the Plaintiffs have suffered damages for the loss of value to their home, mental anguish and emotional distress.

WHEREFORE, the Plaintiffs respectfully demand judgment against Bethel Engineering, Inc., to include compensatory, mental anguish and punitive damages, plus interest and costs within the jurisdiction limits of this Court, and any other relief as deemed just and proper.

**COUNT X**  
**NUISANCE**

**Against D.R. Horton, Inc., and D.R. Horton, Inc. – Birmingham**

71. The Plaintiffs incorporate the foregoing paragraphs as though fully set forth herein.
72. D.R. Horton, Inc. and D.R. Horton, Inc. - Birmingham constructed and/or developed the Plaintiffs homes and neighborhoods in such a manner as to cause water, to include rainwater, to flow onto and accumulate on the Plaintiffs properties.
73. The flow onto and accumulation of water, to include rainwater, on the Plaintiffs property, caused by the activities of D.R. Horton, Inc. and D.R. Horton, Inc. - Birmingham, was such that it would affect and interfere with an ordinary and reasonable person's use and enjoyment of their property.
74. The flow onto and accumulation of water, to include rainwater, on the Plaintiffs property due to the activities of D.R. Horton, Inc. and D.R. Horton, Inc. - Birmingham constitutes a nuisance.
75. The flow onto and accumulation of water, to include rainwater, on the Plaintiffs property, having continued from when the development began until the current date, is a continuous and/or permanent nuisance.
76. The flowing of water, to include rainwater, onto and accumulating on the Plaintiffs property has affected the property and caused substantial harm to it.
77. As a proximate consequence of the aforesaid nuisance, the Plaintiffs have been caused to suffer the following damages:
  - a. Loss of use and enjoyment of her property;
  - b. Damage to her property and appurtenances thereto;



- c. Economic loss, including, but not limited to, a diminution of the value and marketability of her property; and,
- d. Mental anguish and emotional distress.

WHEREFORE, the Plaintiffs respectfully demand judgment against D.R. Horton, Inc., and D.R. Horton Inc., - Birmingham, to include compensatory, mental anguish and punitive damages, plus interest and costs within the jurisdiction limits of this Court, and any other relief as deemed just and proper.

Respectfully Submitted,

By: /S/ J. THOMAS PILCHER, IV  
J. Thomas Pilcher, IV (PIL013)  
Attorney for Plaintiff

By: /S/ David L. Sheller  
David L. Sheller (SHE026)  
Attorney for Plaintiff

WILKINS, BANKESTER, BILES  
& WYNNE, P.A.  
PO Box 400  
Bay Minette, AL. 36507  
251-937-7024  
[tpilcher@wbbwlaw.com](mailto:tpilcher@wbbwlaw.com)

SHELLER LAW FIRM, PLLC  
360 FM 1959  
Houston, TX 77034  
832-841-1175  
[david@shellerlawfirm.com](mailto:david@shellerlawfirm.com)

**Plaintiff's demand a trial by jury of all issues involved herein.**

/S/ J. THOMAS PILCHER, IV  
J. Thomas Pilcher, IV (PIL013)



Serve Defendant's as follows:

D.R. Horton, Inc. – Birmingham  
CT Corporation  
2 N. Jackson Street  
Suite 605  
Montgomery, Alabama 36104

D.R. Horton, Inc.  
301 Commerce Street  
Fort Worth, Texas 76102

Bethel Engineering  
Robert Galloway  
3263 Cottage Hill Road  
Mobile, Alabama 36606





ELECTRONICALLY FILED  
11/9/2021 9:40 PM  
05-CV-2021-901218.00  
CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA  
JODY L. WISE, CLERK

**WILKINS, BANKESTER, BILES & V**  
A PROFESSIONAL ASSOCIATION  
**LAWYERS**

201 E. Second Street  
Post Office Box 400  
Bay Minette, Alabama 36507  
Telephone (251) 937-7024  
Fax (251) 937-6190

TAYLOR D. WILKINS, JR.  
MARION E. WYNNE, JR.  
MARCUS E. MCDOWELL  
J. THOMAS PILCHER, IV  
N. TREY CANIDA

FAIRHOPE OFFICE  
221 Fairhope Ave  
Post Office Box 1367  
Fairhope, Alabama 36533  
Telephone (251) 928-1915  
Fax (251) 928-1967

CLAUDE E. BANKESTER (1928-1993)  
KREG L. MORRIS (1969-2001)  
BAYLESS E. BILES (Retired, 2015)

October 12, 2021

DR Horton, Inc. – Birmingham  
CT Corporation  
2 N. Jackson Street  
Suite 605  
Montgomery, Alabama. 36104

*Via Hand Delivery at:*

*7856 West Side Park Dr.  
Mobile, Alabama. 36695*

DR Horton, Inc.  
301 Commerce Street  
Fort Worth, Texas 76102

**RE: Notice of violations with respect to the Alabama Deceptive Trade Practices Act**

To Whom it May Concern:

My firm, along with David Sheller and the Sheller law Firm PLLC, have the pleasure of representing sixty-one (61) home owners all within Baldwin County, Alabama that have purchased homes built by DR Horton. At the time of closing, all of these homeowners were assured they were purchasing a "gold fortified" home. Upon information and belief, this was marketed to each homeowner, and each homeowner does in fact have a gold fortified certificate. In reality, each of these homes are not gold fortified. Attached hereto to this letter is the findings of CTL Group, Intertek and Team Complete. Within those reports you will see that the homes tested were diverse in their region of the County, but similar in that they shared similar defects. Not a single home inspected meets the gold fortification standards outlined in the Insurance Institute for Business and Home Safety (IBHS) Fortified Home Technical Home Requirements (Attached hereto for your convenience). Those deficiencies include, but are not limited to:

- a) Windows do not meet standards. Installed windows are non-impact.  
Additionally, of the windows tested, the water and air filtration ratings are not to



October 12, 2021  
 DR Horton; Notice of Violations of DTPA

Page 2 of 5

satisfactory requirements.

- b) Roof bracings and strappings are deficient and not to standards required as noted in the CTL Group Report and inspection reports by Team Complete.
- c) Fasteners for roof underlayments are deficient and not to standards required as noted in the CTL Group Report and inspection reports by Team Complete.
- d) The foundation sites are not properly prepped, or graded. As such, foundations do not meet the code requirements. Further, the foundations which have been inspected provide that the mesh, or welded wire fabric (WWF), is not properly placed; there is a failure to maintain consistent slab thickness; lack of base material compaction; poor base material elevation controls; improperly installed foundation anchors and post-installed repair anchors (often being visible from outside the foundation) as noted in the CTL Group Report and inspection reports by Team Complete.
- e) Fasteners for vinyl siding are deficient and not to standards required as noted in the CTL Group Report and inspection reports by Team Complete.
- f) Bracing of gable end walls are deficient and not to standards required as noted in the CTL Group Report and inspection reports by Team Complete.
- g) Varying other Baldwin County and municipal county code violations which would inhibit the homes from becoming code compliant (for example, weep holes not being adequately placed, foundation being too low to grade, flashing not being installed, etc.).

In multiple homes we have noted that flashing and Tyvek wrap has not been properly installed. At this time, we have only destructively tested one home, but in that home, we found the brick was not tied down in the areas removed, the Tyvek wrap was not properly tucked in the window (causing water to access the interior of the home), the Tyvek wrap and the flashings were situated in such a manner that would actually accumulate and hold water against the wood frame, and the brick mortar was back filed to such an extent that water could not be released through weep holes. We believe this will be found in each home.

In addition to the reports noted, I have included photographs and inspection reports from Team Complete for each of the sixty-one (61) home owners. These reports detail the issues noted above and list the repairs for each home necessary to bring the home within the gold fortified standards, and would also bring them compliant with municipal and county construction ordinances as well.

Alabama, as a State Legislature, acknowledged that consumers, such as our clients, need protection for public health, welfare and interest. And as such, the Deceptive Trade Practices Act was codified (Code of Alabama, 1975, Section 8-19-1, *et. seq.*). Under the statute, conduct such as yours, is an unlawful trade practice. Here, DR Horton marketed and advertised these houses to be gold fortified and compliant with county and municipal construction ordinances. These practices are violative of Section 8-19-5, (2), (5) and (7), which states:

“The following deceptive acts or practices in the conduct of any trade or commerce are



October 12, 2021  
DR Horton; Notice of Violations of DTPA

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hereby declared to be unlawful:

(2) Causing confusion or misunderstanding as to the source, sponsorship, approval, or certification of goods or services.

(5) Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or qualities that they do not have or that a person has sponsorship, approval, status, affiliation, or connection that he or she does not have.

(7) Representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another.”

Code of Alabama, 1975, Section 8-19-5.

Pursuant to Section 8-19-10, a citizen has a private right of action for such violations. Section (e) states that notice must be given “at least 15 days prior to the filing of any action under this section...”. (Code of Alabama, 1975, Section 8-19-10(e)). Please understand, this letter is being written to provide the notice described in section (e). Further, each of our sixty-one (61) clients intend to bring an action in the event this demand is rejected within fifteen (15) days from demand.

The damages for which one can receive in a private right of action are detailed in Section 8-19-10(a)(1)-(3), which provides:

“(a) Any person who commits one or more of the acts or practices declared unlawful under this chapter and thereby causes monetary damage to a consumer, and any person who commits one or more of the acts or practices declared unlawful in subdivisions (19) and (20) of Section 8-19-5 and thereby causes monetary damage to another person, shall be liable to each consumer or other person for:

(1) Any actual damages sustained by such consumer or person, or the sum of \$100, whichever is greater; or

(2) Up to three times any actual damages, in the court's discretion. In making its determination under this subsection, the court shall consider, among other relevant factors, the amount of actual damages awarded, the frequency of the unlawful acts or practices, the number of persons adversely affected thereby and the extent to which the unlawful acts or practices were committed intentionally; and

(3) In the case of any successful action or counterclaim to enforce the foregoing liability or in which injunctive relief is obtained, the costs of the action or counterclaim, together with a reasonable attorney's fee. On a finding by the court that an action or counterclaim under this section was frivolous or brought in bad faith or for the purpose of harassment, the court shall award to the defendant (or counterclaim-defendant) reasonable attorney's fees and costs.”

Code of Alabama, 1975, 8-19-10(a)(1)-(3).

Within our clients, we have several factors that are creating damages. Their homes value is diminished due to the repair issues noted in the CTL report and Team Complete Inspections



October 12, 2021  
 DR Horton; Notice of Violations of DTPA

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Reports. Gold Fortified homes in and of themselves have a value. Meaning, a gold fortified home is worth more than a non-gold fortified home. These homes automatically drop in value by losing that designation, and does so significantly. Additionally, there will be an increase in expenses associated with the home. For example, by the home not being gold fortified, home insurance will increase on each house by as much as thirty percent (30%) annually, if not more. The repair estimates range and are detailed on each Inspection Report attached. The total repair costs on the sixty-one (61) homes is Eleven Million, Five Hundred Seventy-Eight Thousand, Two Hundred Fifty-Seven Dollars and 80/100's (\$11,578,257.80).

As you know, these homes are being purchased by individuals who do not have the spare monies to pay for this type of repair. As such, the anxiety of this situation has been difficult to say the least. They are being forced to live in homes that have mildewed, had water intrusion, water drainage issues, and much more. Living with this, and the fear of not being able to afford the repairs is something that the parties could recover for under mental anguish.

As a citizen of Baldwin County, seeing the results of this inspection have been concerning and disappointing. It appears these homes, similar to other neighborhoods in other states that DR Horton constructed, are being built with little care and concern. Therefore, they are going to have significant structural and repairs in the near future. Many of these home owners will not be able to afford such repairs, and therefore, we will have major safety issues and future community blight. In the event this demand is rejected, in accordance with the statutes, we will be pursuing an injunction to halt construction of homes that are not compliant with Gold Fortification Standards and county and municipal construction codes. This will be done to get your construction practices in conformance with the promises that your company is making to each home owner.

With respect to this demand, we have reviewed each homeowner to ensure they are eligible to bring claims under the Deceptive Trade Practices Act (DTPA). I would ask you to take note that other construction defect claims are viable to bring in addition to the DTPA claim that could potentially allow for additional damages, like mental anguish (breach of contract). However, for the purposes of this demand, we have not included mental anguish.

In an attempt to streamline this, I am making an offer that would allow for settlement of all sixty-one (61) homeowners at a single time. It would allow for DR Horton to make a payment, and my firm would handle the transaction and transfer of funds to each individual homeowner. In doing so, we would request the full balance of repair estimates, which equates to Eleven Million, Five Hundred Seventy-Eight Thousand, Two Hundred Fifty-Seven Dollars and 80/100's (\$11,578,257.80). In an effort to promote compromise, we would only ask for two (2) times those damages, as opposed to the three (3) we would be capable of recovering, which equates to Twenty-Three Million, One Hundred Fifty-Six Thousand, Five Hundred Fifteen Dollars and 60/100's (\$23,156,515.60). Finally, as we would be entitled to attorney's fees, we would ask for those in the amount of Twelve Million, One Hundred Fifty-Seven Thousand, One Hundred Seventy dollars and 70/100's (\$12,157,170.70). The sum total of all funds would be Forty-six Million, Eight Hundred Ninety-One Thousand, Nine Hundred Forty-Four Dollars and 10/100's (\$46,891,944.10).

Please note that Section (e) of Code of Alabama, 1975, Section 8-19-10, provides that a response accepting, tendering an offer, or rejection is due within fifteen (15) days of receipt of this letter.



October 12, 2021  
DR Horton; Notice of Violations of DTPA

Page 5 of 5

I look forward to hearing from you.

Sincerely,

WILKINS, BANKESTER, BILES & WYNNE

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J. Thomas Pilcher IV

SHELLER LAW FIRM, PLLC

/s/David Sheller (with permission)  
David Sheller

Enclosures: Zip Drive containing above mentioned documents





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11/9/2021 9:40 PM  
05-CV-2021-901218.00  
CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA  
JODY L. WISE, CLERK

The Sheller Law Firm, P.L.L.C.  
360 FM 1959  
Houston, Texas 77034

(832) 841-1175

(281) 484-2101 (Fax)

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*David L. Sheller*  
*Board Certified, Personal Injury Trial Law*  
*Texas Board of Legal Specialization*

October 15, 2021

DR Horton, Inc. – Birmingham

CT Corporation

2 N. Jackson Street Suite 605

Montgomery, Alabama. 36104

Via Hand Delivery at: 7856 West Side Park Dr.

Mobile, Alabama. 36695

DR Horton, Inc.

301 Commerce Street

Fort Worth, Texas 76102

Re: Supplement to October 12, 2021 Notice Letter re 61 homes

To Whom It May Concern:

Mental anguish and emotional distress are actual damages. That is especially true in the cases against Horton. Our clients now know their homes are not safe to protect their from a category 3 storm and their biggest investment is at risk. Homeowners also have had continuing problems with the D.R. Horton failure to repair their homes and homeowners and their families are going to have to move out for months while their homes are repaired. There is no place to move to as apartments are full and have long waiting lists. This is common knowledge and causes considerable anguish and distress. Uprooting families into small apartments or even the elderly



causes emotional distress. Also included in this letter is the CTL Group letter regarding the inadequacy of the foundations.

Black's Law Dictionary defines actual damages as follows:

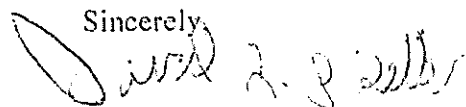
Are real, substantial and just damages, or the amount awarded to a complainant in compensation for his actual and real loss or injury, as opposed on the one hand to "nominal" damages, and on the other to "exemplary" or "punitive" damages. *Ross v. Leggett*, 61 Mich. 445, 28 N. W. 695. 1 Am. St Rep. 608; *Lord v. Wood*, 120 Iowa, 303, 94 N. W. 842; *Western Union Tel. Co. v. Lawson*, 66 Kan.. 600, 72 Pac. 2S3; *Field v. Monster*. 11 Tex. Civ. App. 341, 32 S. W. 417; *Oliver v. Columbia, etc., R. Co.*, 05 S. C. 1, 43 S. E. 307; *Gatzow v. Buening*, 106 Wis. 1. 81 N. W. 1003, 49 L. R. A. 475, 80 Am. St. Rep. 1 ; *Osborn v. Leach*, 135 X. C. 02S 47 S. E. 811, 66 L. R. A. 648; Gen. St. Minn. 1S94..

The demand is \$300,000 per home. People are worried about how their homes will be repaired, and the loss of their biggest investment. Older people may not qualify for another home if they have retired from the work force. For the 61 homes the additional demand is \$18,300,000 plus times two for \$54,900,000 and 35% attorneys fees to date for \$19,215,000. The attorneys fees will increase if suit is filed

As can be seen from the following Alabama verdicts our demand is quite reasonable. *Foster v. Life Ins. Co. of Ga.*, 656 So. 2d 333, 337 (Ala. 1994) (testimony that a defendant's conduct affected the plaintiff "a lot" resulted in a jury award of approximately \$250,000 in mental anguish damages for two months of emotional distress); *Delchamps, Inc. v. Bryant*, 738 So. 2d 824, 836-37 (Ala. 1999) (awarding approximately \$400,000 in mental anguish damages); Ala. *Power Co. v. Murray*, 751 So. 2d 494, 500-01 (Ala. 1999) (testimony that a plaintiff was "all shook up," and "[i]t was just hard," resulted in an award of approximately \$132,000 in mental anguish damages); *Nat'l Ins. Ass'n v. Sockwell*, 829 So. 2d 111, 132 (Ala. 2002) (awarding \$201,000 in compensatory damages, which the defendant claimed was solely attributable to mental anguish damages); *Cochran v. Ward*, 935 So. 2d 1169, 1176 (Ala. 2006) (noting it is not unusual for Alabama juries to award mental anguish damages of \$275,000 or more); *Keller v. NCAA, et al.*, CV-2004-28 (Jackson County, Alabama, 2007) (awarding \$1,000,000 in mental anguish damages).

: In the 2001 case of *Horton Homes, Inc. v. Brooks*, the Alabama Supreme Court cited other decisions as supporting the proposition that "[m]ental anguish includes anxiety, embarrassment, anger, fear, frustration, disappointment, worry, annoyance, and inconvenience."23 Notably, Horton cited the portion of Volkswagen concluding that the jury charge was proper, not the portion quoting the exacting Black's definition.

In short, the Horton Defendants need to pay this demand in 15 days.

Sincerely,  


David L. Sheller

Attorney for the Plaintiffs





March 18, 2021

via email to: [david@shellerlawfirm.com](mailto:david@shellerlawfirm.com)

Mr. David L. Sheller  
The Sheller Law Firm, P.L.L.C.  
360 FM 1959  
Houston, Texas 77034

**Re: Foundation Observations  
Turnberry Crossing Investigation  
CTLGroup Project No. 000108**

Dear Mr. Sheller:

This summary letter outlines CTLGroup's review of foundation construction at the Turnberry Crossing subdivision (Figures 1 - 3) in Baldwin County, Alabama reported to have been constructed by D. R. Horton, Inc. CTLGroup documented foundation conditions at a number of homes under construction at this location during a review of several subdivisions performed in February 2021. Our first engineering report was issued on February 18, 2021.

A summary of our code review is as follows.

- Turnberry Crossing subdivision is situated in Baldwin County, Alabama and is located outside the city limits of nearby Foley, Alabama.
- Per the Baldwin County government website, "The Baldwin County building permit jurisdiction includes all unincorporated areas of Baldwin County..."<sup>1</sup>
- Baldwin County adopted the 2012 version of the International Code Council (ICC) group of model building codes on January 17, 2012.
- Baldwin County rescinded the 2012 versions of the ICC codes and adopted the 2018 versions effective May 21, 2019.<sup>2</sup> This code grouping includes the 2018 version of the International Residential Code (IRC).
- It is likely that homes currently under construction in February 2021 were permitted after May 2019. Thus, the 2018 IRC and the 2018 Baldwin County supplemental code would be expected to apply.
- The 2018 IRC references the 2014 editions of *Building Code Requirements for Structural Concrete* (ACI 318-14) and *Residential Code Requirements for Structural Concrete* (ACI 332-14), both published by the American Concrete Institute.

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<sup>1</sup> <https://baldwincountyal.gov/departments/building-inspection>, accessed January 21, 2021

<sup>2</sup> Resolution #2019-075 dated May 21, 2019



Mr. David L. Sheller  
Turnberry Crossing Investigation  
CTLGroup Project No. 000108

March 18, 2021  
Page 2 of 5

- We would expect a competent engineered design to prescribe details in conformance with ACI standards such as ACI 318 and ACI 332.
- CTLGroup believes the reinforcing placement and subgrade conditions visible during our inspection on February 9, 2021 represented the "finished" condition. In particular, workers had moved on to adjacent foundation sites and components including steel reinforcing, tie-down straps, bar supports, vapor barrier, and formwork had already been installed.
- CTLGroup understands that your office has requested permit drawings for these developments, but local permitting authorities have not released the documents because of reported copyright restrictions. Permit drawings could confirm which accepted ACI standards were adopted in the design of the foundation systems.

Based on our work to date CTLGroup has developed the following preliminary findings related to the development at Turnberry Crossing:

- ACI 318-14 Article 20.6.1.3.1 requires that embedded steel reinforcement where concrete is cast against and permanently exposed to earth have clear cover of three inches (three inches of concrete between the ground surface and the reinforcing).<sup>3</sup> Typical concrete tolerances allow a reduction for clear cover of only  $\frac{3}{8}$  inch.<sup>4</sup> However, many of the thickened slab edge reinforcing bars and welded wire fabric (WWF) reinforcing sheets were found to have clear cover of zero (Figures 4 and 5); reinforcement was in contact with the vapor barrier material or earth. Failure to encapsulate reinforcing and to provide sufficient cover would be expected to diminish the durability and service life of the foundation system and result in premature deterioration.
- ACI 318-14 Article 25.5.4 prescribes minimum lap lengths for plain wire WWR. The Concrete Reinforcing Specification Institute (CRSI) also recommends the use of WWF fabric for temperature and shrinkage crack control.<sup>5</sup> Depending on the design details, ACI 318-14 Article 25.5.4.1 may apply which requires a lap length of one cross wire spacing plus two inches. However, the WWF fabric was typically lapped only one crosswire space (Figure 6). Failure to achieve sufficient lap lengths would be expected to degrade the reinforcement's ability to control concrete floor cracks.
- ACI 318-14 Article 26.6.2.2(a) requires that embedded reinforcement be adequately supported before concrete placement.<sup>6</sup> CRSI also recommends that WWF be sufficiently stiff to remain in position during concrete placement.<sup>7</sup> However, WWF bar chairs were infrequently installed and the WWF sheets were regularly deformed downward and in contact with the base layer<sup>8</sup> (Figure 7). Supporting devices for reinforcing bars in downturned perimeter footings were similarly infrequently installed, or absent. Failure to properly position and support the reinforcing would be expected to diminish the durability and service life of the foundation, degrade the reinforcement's ability to control concrete floor cracks, and affect the structural performance of the footings.

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<sup>3</sup> ACI 332-14 Article 5.6 provides a similar requirement for concrete cover and tolerance.

<sup>4</sup> *Standard Tolerances for Concrete Construction and Materials*, ACI-117

<sup>5</sup> CRSI Engineering Data Report No. 37 – *Reinforcing Steel in Slabs on Grade*

<sup>6</sup> ACI 332-14 Article 10.6.1 provides a similar requirement for supporting reinforcement.

<sup>7</sup> IRC 2018 R506.2.4 requires that WWF be placed between the center to upper one third of the slab for concrete floors on ground.

<sup>8</sup> *Guide to Design of Slabs-on-Ground*, ACI-360, Chapter 4, Fig. 4,1



Mr. David L. Sheller  
Turnberry Crossing Investigation  
CTLGroup Project No. 000108

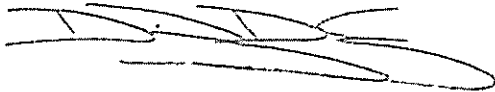
March 18, 2021  
Page 3 of 5

- ACI 332-14 Article 6.2.4 requires areas prepared for the placement of concrete shall be free of debris and contaminants. Such areas shall also be free of water. Additionally, ACI 332-14 Article 4.2.4 requires at the time concrete is placed, reinforcement shall be free of materials deleterious to development of bond strength between the reinforcement and the concrete. Several areas of the vapor barrier were contaminated with debris, soil, and water (Figures 2, 3, 4, 7, and 8).
- ACI-117 tolerances allow slab thickness to be reduced by up to ¼ inch and increased up to ¾ inch. Accepted industry recommendations<sup>9</sup> for base materials recommend conformance with ACI 117. However visible base layer surfaces exhibited widespread surface elevation variations measuring up to approximately four inches (Figure 8). This condition is not consistent with expected and necessary compaction and leveling work<sup>10</sup> and does not satisfy recognized industry standards or tolerances for construction. Failure to adequately compact base layer materials would be expected to cause settlement and failure to level base layer materials would be expected to contribute to crack formation.

We have endeavored to accurately and thoroughly present each area of concern identified during our site observations in accordance with current standards of professional practice. We reserve the right to modify this report and its opinions based on additional information as it becomes available.

We sincerely appreciate the opportunity to be of service and look forward to assisting you in this matter.

Sincerely,



David Drengenberg P.E. (AL)  
Senior Engineer & Group Director  
Structural Engineering & Advanced Mechanics  
[DDrengenberg@CTLGroup.com](mailto:DDrengenberg@CTLGroup.com)  
Direct: (847) 972-3064  
Cell: 847-280-0220

---

<sup>9</sup> *Guide to Concrete Floor and Slab Construction*, ACI 302.1R, Article 6.1.3

<sup>10</sup> ACI 332-14 Article 10.2 requires fill be "compacted to provide uniform support of the slab."



Mr. David L. Sheller  
Turnberry Crossing Investigation  
CTLGroup Project No. 000108

March 18, 2021  
Page 4 of 5



Figure 1: Foundation construction area

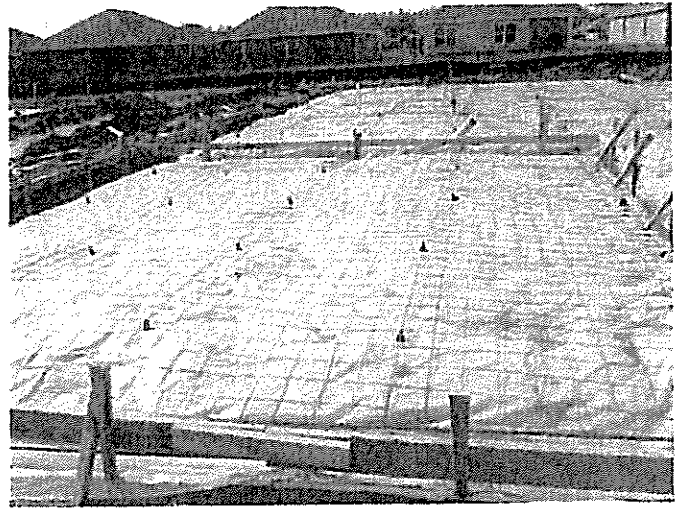


Figure 2: General construction condition

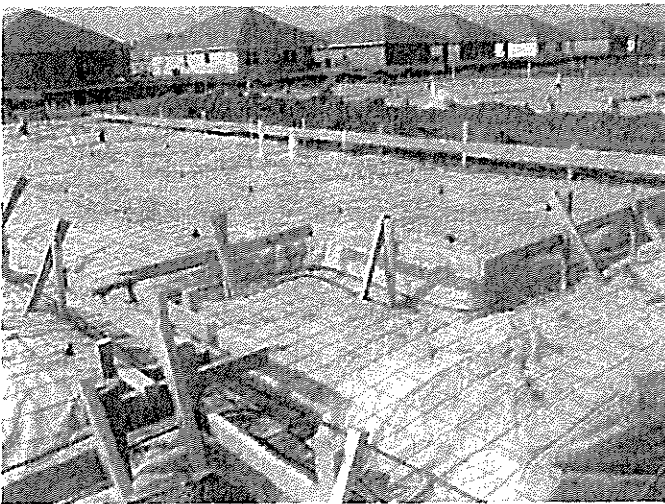


Figure 3: General construction condition

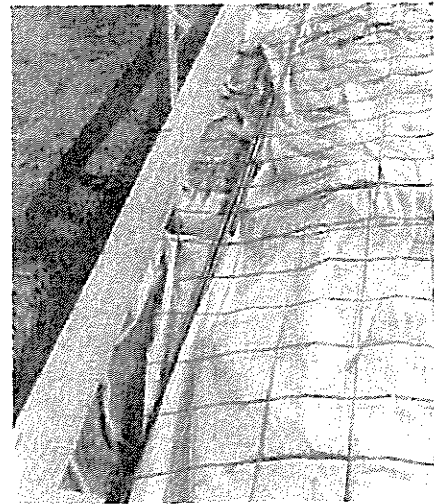


Figure 4: Edge bars and WWF in contact with vapor barrier



Mr. David L. Sheller  
Turnberry Crossing Investigation  
CTLGroup Project No. 000108

March 18, 2021  
Page 5 of 5

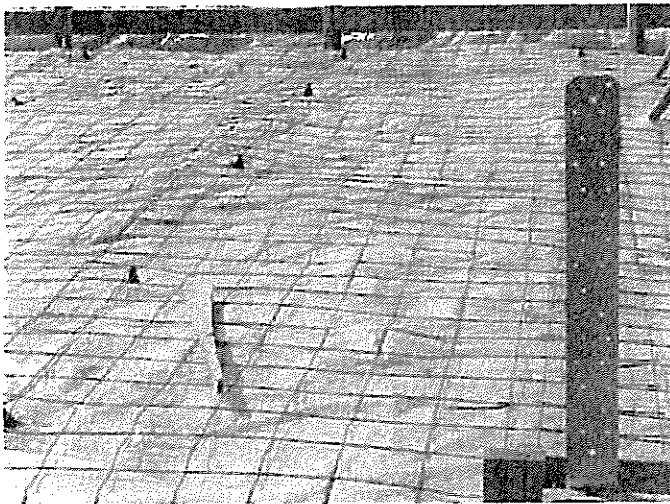


Figure 5: WWF generally in contact with vapor barrier

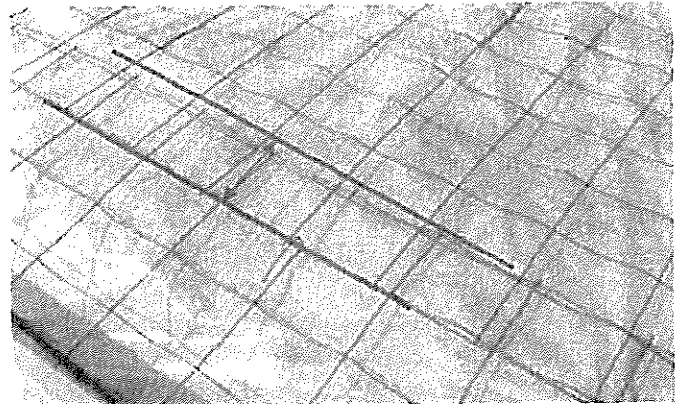


Figure 6: Single wire lap length

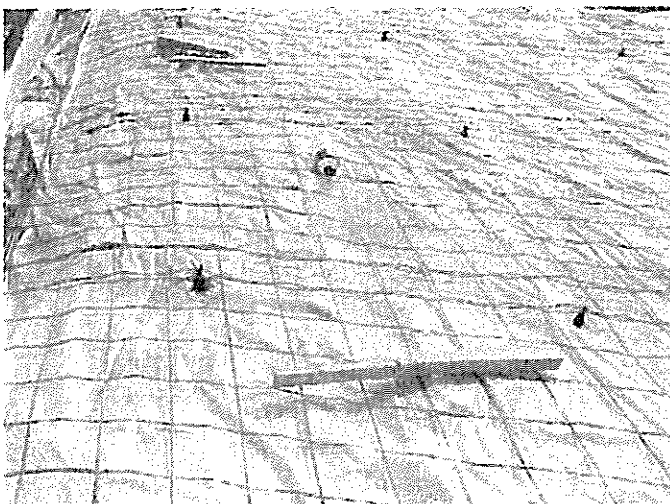


Figure 7: Infrequent WWF supports (black chairs), contamination, and bars in contact with base

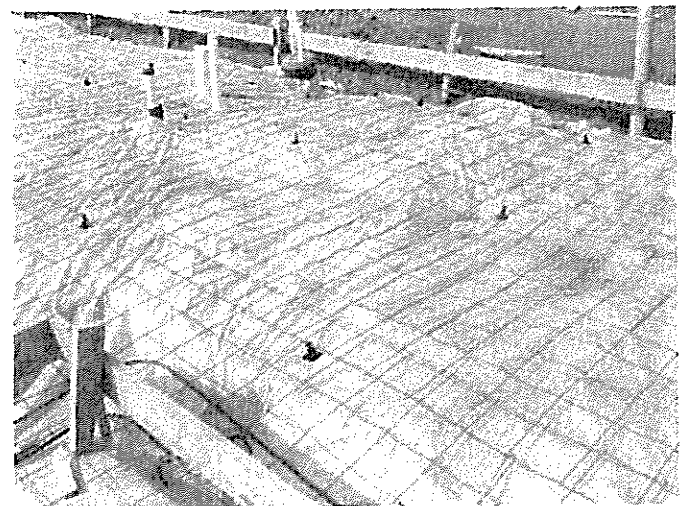


Figure 8: Base layer elevation variations





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**WILKINS, BANKESTER, BILES & V**  
A PROFESSIONAL ASSOCIATION  
**LAWYERS**

201 E. Second Street  
Post Office Box 400  
Bay Minette, Alabama 36507  
Telephone (251) 937-7024  
Fax (251) 937-6190

TAYLOR D. WILKINS, JR.  
MARION E. WYNNE, JR.  
MARCUS E. MCDOWELL  
J. THOMAS PILCHER, IV  
N. TREY CANIDA

FAIRHOPE OFFICE  
221 Fairhope Ave  
Post Office Box 1367  
Fairhope, Alabama 36533  
Telephone (251) 928-1915  
Fax (251) 928-1967

CLAUDE E. BANKESTER (1928-1993)  
KREG L. MORRIS (1969-2001)  
BAYLESS E. BILES (Retired, 2015)

October 12, 2021

Bethel Engineering  
Attn: Robert M. Galloway  
3263 Cottage Hill Road  
Mobile, Alabama 36606

*Via Hand Delivery:*

*3233 Executive Park Circle  
Mobile, Alabama. 36606*

**RE: Notice of violations with respect to the Alabama Deceptive Trade Practices Act**

To Whom it May Concern:

My firm, along with David Sheller and the Sheller law Firm PLLC, have the pleasure of representing sixty-one (61) home owners all within Baldwin County, Alabama that have purchased homes built by DR Horton. At the time of closing, all of these homeowners were assured they were purchasing a "gold fortified" home. Upon information and belief, this was marketed to each homeowner, and each homeowner does in fact have a gold fortified certificate. In reality, each of these homes are not gold fortified. Attached hereto to this letter is the findings of CTL Group, Intertek and Team Complete. Within those reports you will see that the homes tested were diverse in their region of the County, but similar in that they shared similar defects. Not a single home inspected meets the gold fortification standards outlined in the Insurance Institute for Business and Home Safety (IBHS) Fortified Home Technical Home Requirements (Attached hereto for your convenience). Those deficiencies include, but are not limited to:

- a) Windows do not meet standards. Installed windows are non-impact. Additionally, of the windows tested, the water and air filtration ratings are not to satisfactory requirements.
- b) Roof bracings and strappings are deficient and not to standards required as noted in the CTL Group Report and inspection reports by Team Complete.



October 12, 2021  
 DR Horton; Notice of Violations of DTPA

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- c) Fasteners for roof underlayments are deficient and not to standards required as noted in the CTL Group Report and inspection reports by Team Complete.
- d) The foundation sites are not properly prepped, or graded. As such, foundations do not meet the code requirements. Further, the foundations which have been inspected provide that the mesh, or welded wire fabric (WWF), is not properly placed; there is a failure to maintain consistent slab thickness; lack of base material compaction; poor base material elevation controls; improperly installed foundation anchors and post-installed repair anchors (often being visible from outside the foundation) as noted in the CTL Group Report and inspection reports by Team Complete.
- e) Fasteners for vinyl siding are deficient and not to standards required as noted in the CTL Group Report and inspection reports by Team Complete.
- f) Bracing of gable end walls are deficient and not to standards required as noted in the CTL Group Report and inspection reports by Team Complete.
- g) Varying other Baldwin County and municipal county code violations which would inhibit the homes from becoming code compliant (for example, weep holes not being adequately placed, foundation being too low to grade, flashing not being installed, etc.).

In multiple homes we have noted that flashing and Tyvek wrap has not been properly installed. At this time, we have only destructively tested one home, but in that home, we found the brick was not tied down in the areas removed, the Tyvek wrap was not properly tucked in the window (causing water to access the interior of the home), the Tyvek wrap and the flashings were situated in such a manner that would actually accumulate and hold water against the wood frame, and the brick mortar was back filed to such an extent that water could not be released through weep holes. We believe this will be found in each home.

In addition to the reports noted, I have included photographs and inspection reports from Team Complete for each of the sixty-one (61) home owners. These reports detail the issues noted above and list the repairs for each home necessary to bring the home within the gold fortified standards, and would also bring them compliant with municipal and county construction ordinances as well.

Alabama, as a State Legislature, acknowledged that consumers, such as our clients, need protection for public health, welfare and interest. And as such, the Deceptive Trade Practices Act was codified (Code of Alabama, 1975, Section 8-19-1, *et. seq.*). Under the statute, conduct such as yours, is an unlawful trade practice. Here, DR Horton marketed and advertised these houses to be gold fortified and compliant with county and municipal construction ordinances. These practices are violative of Section 8-19-5, (2), (5) and (7), which states:

“The following deceptive acts or practices in the conduct of any trade or commerce are hereby declared to be unlawful:

- (2) Causing confusion or misunderstanding as to the source, sponsorship, approval, or certification of goods or services.



October 12, 2021  
 DR Horton; Notice of Violations of DTPA

Page 3 of 5

(5) Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or qualities that they do not have or that a person has sponsorship, approval, status, affiliation, or connection that he or she does not have.

(7) Representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another.”

Code of Alabama, 1975, Section 8-19-5.

Pursuant to Section 8-19-10, a citizen has a private right of action for such violations. Section (e) states that notice must be given “at least 15 days prior to the filing of any action under this section...”. (Code of Alabama, 1975, Section 8-19-10(e)). Please understand, this letter is being written to provide the notice described in section (e). Further, each of our sixty-one (61) clients intend to bring an action in the event this demand is rejected within fifteen (15) days from demand.

The damages for which one can receive in a private right of action are detailed in Section 8-19-10(a)(1)-(3), which provides:

“(a) Any person who commits one or more of the acts or practices declared unlawful under this chapter and thereby causes monetary damage to a consumer, and any person who commits one or more of the acts or practices declared unlawful in subdivisions (19) and (20) of Section 8-19-5 and thereby causes monetary damage to another person, shall be liable to each consumer or other person for:

(1) Any actual damages sustained by such consumer or person, or the sum of \$100, whichever is greater; or

(2) Up to three times any actual damages, in the court's discretion. In making its determination under this subsection, the court shall consider, among other relevant factors, the amount of actual damages awarded, the frequency of the unlawful acts or practices, the number of persons adversely affected thereby and the extent to which the unlawful acts or practices were committed intentionally; and

(3) In the case of any successful action or counterclaim to enforce the foregoing liability or in which injunctive relief is obtained, the costs of the action or counterclaim, together with a reasonable attorney's fee. On a finding by the court that an action or counterclaim under this section was frivolous or brought in bad faith or for the purpose of harassment, the court shall award to the defendant (or counterclaim-defendant) reasonable attorney's fees and costs.”

Code of Alabama, 1975, 8-19-10(a)(1)-(3).

Within our clients, we have several factors that are creating damages. Their homes value is diminished due to the repair issues noted in the CTL report and Team Complete Inspections Reports. Gold Fortified homes in and of themselves have a value. Meaning, a gold fortified home is worth more than a non-gold fortified home. These homes automatically drop in value by losing that designation, and does so significantly. Additionally, there will be an increase in expenses associated with the home. For example, by the home not being gold fortified, home



October 12, 2021

Page 4 of 5

DR Horton; Notice of Violations of DTPA

insurance will increase on each house by as much as thirty percent (30%) annually, if not more. The repair estimates range and are detailed on each Inspection Report attached. The total repair costs on the sixty-one (61) homes is Eleven Million, Five Hundred Seventy-Eight Thousand, Two Hundred Fifty-Seven Dollars and 80/100's (\$11,578,257.80).

As you know, these homes are being purchased by individuals who do not have the spare monies to pay for this type of repair. As such, the anxiety of this situation has been difficult to say the least. They are being forced to live in homes that have mildewed, had water intrusion, water drainage issues, and much more. Living with this, and the fear of not being able to afford the repairs is something that the parties could recover for under mental anguish.

As a citizen of Baldwin County, seeing the results of this inspection have been concerning and disappointing. It appears these homes, similar to other neighborhoods in other states that DR Horton constructed, are being built with little care and concern. Therefore, they are going to have significant structural and repairs in the near future. Many of these home owners will not be able to afford such repairs, and therefore, we will have major safety issues and future community blight. In the event this demand is rejected, in accordance with the statutes, we will be pursuing an injunction to halt construction of homes that are not compliant with Gold Fortification Standards and county and municipal construction codes. This will be done to get your construction practices in conformance with the promises that your company is making to each home owner.

With respect to this demand, we have reviewed each homeowner to ensure they are eligible to bring claims under the Deceptive Trade Practices Act (DTPA). I would ask you to take note that other construction defect claims are viable to bring in addition to the DTPA claim that could potentially allow for additional damages, like mental anguish (breach of contract). However, for the purposes of this demand, we have not included mental anguish.

In an attempt to streamline this, I am making an offer that would allow for settlement of all sixty-one (61) homeowners at a single time. It would allow for DR Horton to make a payment, and my firm would handle the transaction and transfer of funds to each individual homeowner. In doing so, we would request the full balance of repair estimates, which equates to Eleven Million, Five Hundred Seventy-Eight Thousand, Two Hundred Fifty-Seven Dollars and 80/100's (\$11,578,257.80). In an effort to promote compromise, we would only ask for two (2) times those damages, as opposed to the three (3) we would be capable of recovering, which equates to Twenty-Three Million, One Hundred Fifty-Six Thousand, Five Hundred Fifteen Dollars and 60/100's (\$23,156,515.60). Finally, as we would be entitled to attorney's fees, we would ask for those in the amount of Twelve Million, One Hundred Fifty-Seven Thousand, One Hundred Seventy dollars and 70/100's (\$12,157,170.70). The sum total of all funds would be Forty-six Million, Eight Hundred Ninety-One Thousand, Nine Hundred Forty-Four Dollars and 10/100's (\$46,891,944.10).

Please note that Section (e) of Code of Alabama, 1975, Section 8-19-10, provides that a response accepting, tendering an offer, or rejection is due within fifteen (15) days of receipt of this letter.

I look forward to hearing from you.

Sincerely,



October 12, 2021  
DR Horton; Notice of Violations of DTPA

Page 5 of 5

WILKINS, BANKESTER, BILES & WYNNE

---

J. Thomas Pilcher IV

SHELLER LAW FIRM, PLLC

/s/David Sheller (with permission)  
David Sheller

Enclosures: Zip Drive containing above mentioned documents





## AlaFile E-Notice

05-CV-2021-901218.00

To: JOSEPH THOMAS PILCHER  
tpilcher@wbbwlaw.com

---

# NOTICE OF ELECTRONIC FILING

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IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA

MICHAEL MORTON ET AL V. D.R. HORTON, INC. - BIRMINGHAM ET AL  
05-CV-2021-901218.00

The following complaint was FILED on 11/9/2021 9:40:15 PM

Notice Date: 11/9/2021 9:40:15 PM

JODY L. WISE  
CIRCUIT COURT CLERK  
BALDWIN COUNTY, ALABAMA  
312 COURTHOUSE SQUARE  
SUITE 10  
BAY MINETTE, AL, 36507

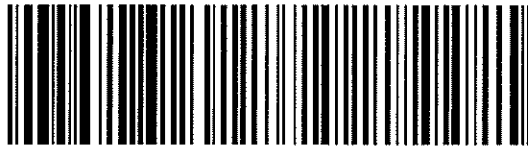
251-937-9561  
jody.wise@alacourt.gov





312 COURTHOUSE SQUARE  
SUITE 10  
BAY MINETTE, AL 36507

USPS CERTIFIED MAIL



9214 8901 7301 4105 2100 0813 13

05-CV-2021-901218.00

To: D.R. HORTON, INC. - BIRMINGHAM  
2 N. JACKSON STREET  
SUITE 605  
MONTGOMERY, AL 36104

---

## NOTICE OF ELECTRONIC FILING

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IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA

MICHAEL MORTON ET AL V. D.R. HORTON, INC. - BIRMINGHAM ET AL  
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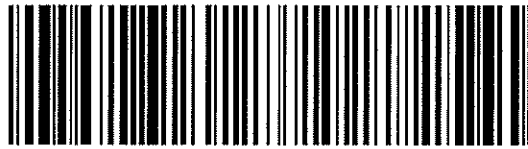
251-937-9561  
jody.wise@alacourt.gov





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BAY MINETTE, AL 36507

USPS CERTIFIED MAIL



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05-CV-2021-901218.00

To: D.R. HORTON, INC.  
301 COMMERCE STREET  
FORT WORTH, TX 76102

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## NOTICE OF ELECTRONIC FILING

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IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA

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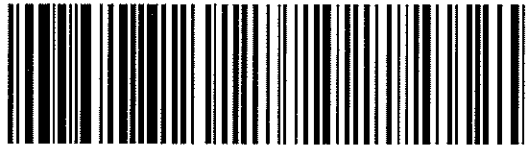
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SUITE 10  
BAY MINETTE, AL 36507

USPS CERTIFIED MAIL



9214 8901 7301 4105 2100 0813 37

05-CV-2021-901218.00

To: BETHEL ENGINEERING, INC.  
3263 COTTAGE HILL ROAD  
MOBILE, AL 36606

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## NOTICE OF ELECTRONIC FILING

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IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA

MICHAEL MORTON ET AL V. D.R. HORTON, INC. - BIRMINGHAM ET AL  
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251-937-9561  
jody.wise@alacourt.gov



State of Alabama Unified Judicial System Form C-34 Rev. 4/2017	<b>SUMMONS</b> <b>- CIVIL -</b>	<b>Court Case Number</b> 05-CV-2021-901218.00
<b>IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA</b> <b>MICHAEL MORTON ET AL V. D.R. HORTON, INC. - BIRMINGHAM ET AL</b>		
<b>NOTICE TO:</b> D.R. HORTON, INC. - BIRMINGHAM, 2 N. JACKSON STREET SUITE 605, MONTGOMERY, AL 36104 <div style="text-align: center; margin-top: 5px;"> <i>(Name and Address of Defendant)</i> </div> <p style="margin-top: 10px;">         THE COMPLAINT OR OTHER DOCUMENT WHICH IS ATTACHED TO THIS SUMMONS IS IMPORTANT, AND YOU MUST TAKE IMMEDIATE ACTION TO PROTECT YOUR RIGHTS. YOU OR YOUR ATTORNEY ARE REQUIRED TO FILE THE ORIGINAL OF YOUR WRITTEN ANSWER, EITHER ADMITTING OR DENYING EACH ALLEGATION IN THE COMPLAINT OR OTHER DOCUMENT, WITH THE CLERK OF THIS COURT. A COPY OF YOUR ANSWER MUST BE MAILED OR HAND DELIVERED BY YOU OR YOUR ATTORNEY TO THE PLAINTIFF(S) OR ATTORNEY(S) OF THE PLAINTIFF(S),          JOSEPH THOMAS PILCHER       </p> <div style="text-align: center; margin-top: 5px;"> <i>(Name(s) of Attorney(s))</i> </div> <p style="margin-top: 10px;">         WHOSE ADDRESS(ES) IS/ARE: PO Box 400, Bay Minette, AL 36507       </p> <div style="text-align: center; margin-top: 5px;"> <i>(Address(es) of Plaintiff(s) or Attorney(s))</i> </div> <p style="margin-top: 10px;">         THE ANSWER MUST BE MAILED OR DELIVERED WITHIN 30 DAYS AFTER THIS SUMMONS AND COMPLAINT OR OTHER DOCUMENT WERE SERVED ON YOU OR A JUDGMENT BY DEFAULT MAY BE RENDERED AGAINST YOU FOR THE MONEY OR OTHER THINGS DEMANDED IN THE COMPLAINT OR OTHER DOCUMENT.       </p>		
<b>TO ANY SHERIFF OR ANY PERSON AUTHORIZED BY THE ALABAMA RULES OF CIVIL PROCEDURE TO SERVE PROCESS:</b> <p style="margin-top: 10px;"> <input type="checkbox"/> You are hereby commanded to serve this Summons and a copy of the Complaint or other document in this action upon the above-named Defendant.       </p> <p style="margin-top: 10px;"> <input checked="" type="checkbox"/> Service by certified mail of this Summons is initiated upon the written request of <u>MICHAEL MORTON</u>  <div style="text-align: right; margin-right: 50px;"><i>(Name(s))</i></div> <p style="margin-top: 5px;">           11/09/2021 <span style="margin-left: 150px;">/s/ JODY L. WISE</span> <span style="margin-left: 50px;">By:</span>  <div style="display: flex; justify-content: space-between;"> <span><i>(Date)</i></span> <span><i>(Signature of Clerk)</i></span> <span><i>(Name)</i></span> </div> </p> </p>		
<input checked="" type="checkbox"/> Certified Mail is hereby requested. <span style="float: right;">/s/ JOSEPH THOMAS PILCHER</span> <div style="text-align: right; margin-right: 50px;"><i>(Plaintiff's/Attorney's Signature)</i></div>		
<b>RETURN ON SERVICE</b>		
<input type="checkbox"/> Return receipt of certified mail received in this office on _____ <div style="text-align: right; margin-right: 50px;"><i>(Date)</i></div> <p style="margin-top: 10px;"> <input type="checkbox"/> I certify that I personally delivered a copy of this Summons and Complaint or other document to _____  <div style="display: flex; justify-content: space-between; margin-top: 5px;"> <span><i>(Name of Person Served)</i></span> <span><i>(Name of County)</i></span> </div> <p style="margin-top: 10px;">         Alabama on _____  <div style="text-align: center; margin-top: 5px;"><i>(Date)</i></div> </p> <div style="display: flex; justify-content: space-between; margin-top: 20px;"> <div style="width: 30%;">           _____  <i>(Type of Process Server)</i> </div> <div style="width: 30%;">           _____  <i>(Server's Signature)</i> </div> <div style="width: 30%;">           _____  <i>(Address of Server)</i> </div> </div> <div style="display: flex; justify-content: space-between; margin-top: 10px;"> <div style="width: 30%;">           _____  <i>(Server's Printed Name)</i> </div> <div style="width: 30%;">           _____  <i>(Phone Number of Server)</i> </div> </div> </p>		



State of Alabama Unified Judicial System Form C-34 Rev. 4/2017	<b>SUMMONS</b> <b>- CIVIL -</b>	<b>Court Case Number</b> 05-CV-2021-901218.00
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**IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA**  
**MICHAEL MORTON ET AL V. D.R. HORTON, INC. - BIRMINGHAM ET AL**

**NOTICE TO:** D.R. HORTON, INC., 301 COMMERCE STREET, FORT WORTH, TX 76102  
 \_\_\_\_\_  
*(Name and Address of Defendant)*

THE COMPLAINT OR OTHER DOCUMENT WHICH IS ATTACHED TO THIS SUMMONS IS IMPORTANT, AND YOU MUST TAKE IMMEDIATE ACTION TO PROTECT YOUR RIGHTS. YOU OR YOUR ATTORNEY ARE REQUIRED TO FILE THE ORIGINAL OF YOUR WRITTEN ANSWER, EITHER ADMITTING OR DENYING EACH ALLEGATION IN THE COMPLAINT OR OTHER DOCUMENT, WITH THE CLERK OF THIS COURT. A COPY OF YOUR ANSWER MUST BE MAILED OR HAND DELIVERED BY YOU OR YOUR ATTORNEY TO THE PLAINTIFF(S) OR ATTORNEY(S) OF THE PLAINTIFF(S), JOSEPH THOMAS PILCHER  
 \_\_\_\_\_  
*[Name(s) of Attorney(s)]*

WHOSE ADDRESS(ES) IS/ARE: PO Box 400, Bay Minette, AL 36507  
 \_\_\_\_\_  
*[Address(es) of Plaintiff(s) or Attorney(s)]*

THE ANSWER MUST BE MAILED OR DELIVERED WITHIN 30 DAYS AFTER THIS SUMMONS AND COMPLAINT OR OTHER DOCUMENT WERE SERVED ON YOU OR A JUDGMENT BY DEFAULT MAY BE RENDERED AGAINST YOU FOR THE MONEY OR OTHER THINGS DEMANDED IN THE COMPLAINT OR OTHER DOCUMENT.

**TO ANY SHERIFF OR ANY PERSON AUTHORIZED BY THE ALABAMA RULES OF CIVIL PROCEDURE TO SERVE PROCESS:**

☐ You are hereby commanded to serve this Summons and a copy of the Complaint or other document in this action upon the above-named Defendant.

☒ Service by certified mail of this Summons is initiated upon the written request of MICHAEL MORTON  
*[Name(s)]*  
 pursuant to the Alabama Rules of the Civil Procedure.

\_\_\_\_\_ 11/09/2021 \_\_\_\_\_ /s/ JODY L. WISE By: \_\_\_\_\_  
*(Date)* *(Signature of Clerk)* *(Name)*

☒ Certified Mail is hereby requested. \_\_\_\_\_  
*(Plaintiff's/Attorney's Signature)*

**RETURN ON SERVICE**

☐ Return receipt of certified mail received in this office on \_\_\_\_\_  
*(Date)*

☐ I certify that I personally delivered a copy of this Summons and Complaint or other document to \_\_\_\_\_  
 \_\_\_\_\_ in \_\_\_\_\_ County,  
*(Name of Person Served)* *(Name of County)*

Alabama on \_\_\_\_\_  
*(Date)*

\_\_\_\_\_  
*(Type of Process Server)*

\_\_\_\_\_  
*(Server's Signature)*

\_\_\_\_\_  
*(Server's Printed Name)*

\_\_\_\_\_  
*(Address of Server)*

\_\_\_\_\_  
*(Phone Number of Server)*



State of Alabama Unified Judicial System Form C-34 Rev. 4/2017	<b>SUMMONS</b> <b>- CIVIL -</b>	<b>Court Case Number</b> 05-CV-2021-901218.00
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**IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA**  
**MICHAEL MORTON ET AL V. D.R. HORTON, INC. - BIRMINGHAM ET AL**

**NOTICE TO:** BETHEL ENGINEERING, INC., 3263 COTTAGE HILL ROAD, MOBILE, AL 36606  
 \_\_\_\_\_  
*(Name and Address of Defendant)*

THE COMPLAINT OR OTHER DOCUMENT WHICH IS ATTACHED TO THIS SUMMONS IS IMPORTANT, AND YOU MUST TAKE IMMEDIATE ACTION TO PROTECT YOUR RIGHTS. YOU OR YOUR ATTORNEY ARE REQUIRED TO FILE THE ORIGINAL OF YOUR WRITTEN ANSWER, EITHER ADMITTING OR DENYING EACH ALLEGATION IN THE COMPLAINT OR OTHER DOCUMENT, WITH THE CLERK OF THIS COURT. A COPY OF YOUR ANSWER MUST BE MAILED OR HAND DELIVERED BY YOU OR YOUR ATTORNEY TO THE PLAINTIFF(S) OR ATTORNEY(S) OF THE PLAINTIFF(S),  
 JOSEPH THOMAS PILCHER  
 \_\_\_\_\_  
*[Name(s) of Attorney(s)]*

WHOSE ADDRESS(ES) IS/ARE: PO Box 400, Bay Minette, AL 36507  
 \_\_\_\_\_  
*[Address(es) of Plaintiff(s) or Attorney(s)]*

THE ANSWER MUST BE MAILED OR DELIVERED WITHIN 30 DAYS AFTER THIS SUMMONS AND COMPLAINT OR OTHER DOCUMENT WERE SERVED ON YOU OR A JUDGMENT BY DEFAULT MAY BE RENDERED AGAINST YOU FOR THE MONEY OR OTHER THINGS DEMANDED IN THE COMPLAINT OR OTHER DOCUMENT.

**TO ANY SHERIFF OR ANY PERSON AUTHORIZED BY THE ALABAMA RULES OF CIVIL PROCEDURE TO SERVE PROCESS:**

☐ You are hereby commanded to serve this Summons and a copy of the Complaint or other document in this action upon the above-named Defendant.

☒ Service by certified mail of this Summons is initiated upon the written request of MICHAEL MORTON  
*[Name(s)]*  
 pursuant to the Alabama Rules of the Civil Procedure.

11/09/2021 /s/ JODY L. WISE By: \_\_\_\_\_  
*(Date)* *(Signature of Clerk)* *(Name)*

☒ Certified Mail is hereby requested. /s/ JOSEPH THOMAS PILCHER  
*(Plaintiff's/Attorney's Signature)*

**RETURN ON SERVICE**

☐ Return receipt of certified mail received in this office on \_\_\_\_\_  
*(Date)*

☐ I certify that I personally delivered a copy of this Summons and Complaint or other document to \_\_\_\_\_  
 \_\_\_\_\_ in \_\_\_\_\_ County,  
*(Name of Person Served)* *(Name of County)*

Alabama on \_\_\_\_\_  
*(Date)*

\_\_\_\_\_  
*(Type of Process Server)*

\_\_\_\_\_  
*(Server's Signature)*

\_\_\_\_\_  
*(Server's Printed Name)*

\_\_\_\_\_  
*(Address of Server)*

\_\_\_\_\_  
*(Phone Number of Server)*





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11/15/2021 8:50 AM  
05-CV-2021-901218.00  
CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA  
JODY L. WISE, CLERK

**IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA**

**MICHAEL MORTON, et al,**

**Plaintiff,**

**v.**

**Case No. CV-2021-901218**

**D.R. HORTON, INC., et al,**

**Defendants.**

---

**NOTICE OF APPEARANCE**

---

Comes now David L. Sheller and files this his Notice of Appearance as Co-Counsel for Plaintiffs in the above-styled action

**Respectfully submitted,**

/s/ David L. Sheller

**DAVID L. SELLER (SHE026)**

[david@shellerlawfirm.com](mailto:david@shellerlawfirm.com)

**Co-Counsel for Plaintiffs**

OF COUNSEL:

Sheller Law Firm, PLLC  
360 FM 1959  
Houston, TX 77034  
832-841-1175





## AlaFile E-Notice

05-CV-2021-901218.00

To: DAVID L. SELLER  
david@shellerlawfirm.com

---

# NOTICE OF ELECTRONIC FILING

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IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA

MICHAEL MORTON ET AL V. D.R. HORTON, INC. - BIRMINGHAM ET AL  
05-CV-2021-901218.00

The following NOTICE OF APPEARANCE was FILED on 11/15/2021 8:50:32 AM

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BALDWIN COUNTY, ALABAMA  
312 COURTHOUSE SQUARE  
SUITE 10  
BAY MINETTE, AL, 36507

251-937-9561  
jody.wise@alacourt.gov





## AlaFile E-Notice

05-CV-2021-901218.00

To: D.R. HORTON, INC. - BIRMINGHAM (PRO SE)  
2 N. JACKSON STREET  
SUITE 605  
MONTGOMERY, AL, 36104-0000

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301 COMMERCE STREET  
FORT WORTH, TX, 76102-0000

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## AlaFile E-Notice

05-CV-2021-901218.00

To: BETHEL ENGINEERING, INC. (PRO SE)  
3263 COTTAGE HILL ROAD  
MOBILE, AL, 36606-0000

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tpilcher@wbbwlaw.com

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MICHAEL MORTON ET AL V. D.R. HORTON, INC. - BIRMINGHAM ET AL  
05-CV-2021-901218.00

The following matter was not served on 11/15/2021

**D002 D.R. HORTON, INC.**

**Corresponding To**

FORWARD EXPIRED

ELECTRONIC CERTIFIED MAIL RETURN

JODY L. WISE  
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05-CV-2021-901218.00

Judge: JODY W. BISHOP

To: SHELLER DAVID LEIGH  
david@shellerlawfirm.com

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IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA

MICHAEL MORTON ET AL V. D.R. HORTON, INC. - BIRMINGHAM ET AL  
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## AlaFile E-Notice

05-CV-2021-901218.00

Judge: JODY W. BISHOP

To: D.R. HORTON, INC. - BIRMINGHAM (PRO SE)  
2 N. JACKSON STREET  
SUITE 605  
MONTGOMERY, AL, 36104-0000

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## AlaFile E-Notice

05-CV-2021-901218.00

Judge: JODY W. BISHOP

To: BETHEL ENGINEERING, INC. (PRO SE)  
3263 COTTAGE HILL ROAD  
MOBILE, AL, 36606-0000

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jody.wise@alacourt.gov





November 15, 2021

Dear Circuit Clerk:

### UJS Information

Case Number: 05-CV-2021-901218.00  
Document Type: Complaint  
Restricted Delivery Requested: No

Intended Recipient:  
D.R. HORTON, INC. - BIRMINGHAM (D001)  
2 N. JACKSON STREET  
SUITE 605  
MONTGOMERY, AL 36104

The following is in response to your request for proof of delivery on your item with the tracking number:  
**9214 8901 7301 4105 2100 0813 13.**

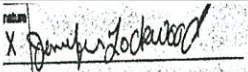
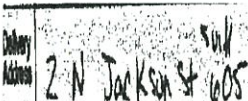
### Item Details

**Status:** Delivered  
**Status Date / Time:** November 15, 2021, 9:35 am  
**Location:** MONTGOMERY, AL 36104  
**Postal Product:** First-Class Mail®  
**Extra Services:** Certified Mail™  
Return Receipt Electronic

### Shipment Details

**Weight:** 8.0oz

### Recipient Signature

Signature of Recipient:	 <small>Printed Name</small> Jennifer Lockwood
Address of Recipient:	 <small>Delivery Address</small> 2 N Jackson St 605

Note: Scanned image may reflect a different destination address due to Intended Recipient's delivery instructions on file.

Thank you for selecting the United States Postal Service® for your mailing needs. If you require additional assistance, please contact your local Post Office™ or a Postal representative at 1-800-222-1811.

Sincerely,  
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475 L'Enfant Plaza SW  
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## AlaFile E-Notice

05-CV-2021-901218.00

Judge: JODY W. BISHOP

To: PILCHER JOSEPH THOMAS IV  
tpilcher@wbbwlaw.com

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## NOTICE OF SERVICE

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IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA

MICHAEL MORTON ET AL V. D.R. HORTON, INC. - BIRMINGHAM ET AL  
05-CV-2021-901218.00

The following matter was served on 11/15/2021

**D001 D.R. HORTON, INC. - BIRMINGHAM**

**Corresponding To**

CERTIFIED MAIL

ELECTRONIC CERTIFIED MAIL RETURN

JODY L. WISE  
CIRCUIT COURT CLERK  
BALDWIN COUNTY, ALABAMA  
312 COURTHOUSE SQUARE  
SUITE 10  
BAY MINETTE, AL, 36507

251-937-9561  
jody.wise@alacourt.gov





## AlaFile E-Notice

05-CV-2021-901218.00

Judge: JODY W. BISHOP

To: SHELLER DAVID LEIGH  
david@shellerlawfirm.com

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## NOTICE OF SERVICE

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IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA

MICHAEL MORTON ET AL V. D.R. HORTON, INC. - BIRMINGHAM ET AL  
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## AlaFile E-Notice

05-CV-2021-901218.00

Judge: JODY W. BISHOP

To: D.R. HORTON, INC. - BIRMINGHAM (PRO SE)  
2 N. JACKSON STREET  
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MONTGOMERY, AL, 36104-0000

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05-CV-2021-901218.00

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## AlaFile E-Notice

05-CV-2021-901218.00

Judge: JODY W. BISHOP

To: D.R. HORTON, INC. (PRO SE)  
301 COMMERCE STREET  
FORT WORTH, TX, 76102-0000

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IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA

MICHAEL MORTON ET AL V. D.R. HORTON, INC. - BIRMINGHAM ET AL  
05-CV-2021-901218.00

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jody.wise@alacourt.gov





## AlaFile E-Notice

05-CV-2021-901218.00

Judge: JODY W. BISHOP

To: BETHEL ENGINEERING, INC. (PRO SE)  
3263 COTTAGE HILL ROAD  
MOBILE, AL, 36606-0000

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## NOTICE OF SERVICE

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IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA

MICHAEL MORTON ET AL V. D.R. HORTON, INC. - BIRMINGHAM ET AL  
05-CV-2021-901218.00

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JODY L. WISE  
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BALDWIN COUNTY, ALABAMA  
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05-CV-2021-901218.00  
CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA  
JODY L. WISE, CLERK

IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA

MICHAEL MORTON, et al,

Plaintiffs,

v.

JURY TRIAL DEMANDED

Case No.: CV-2020-901306

D.R. HORTON, INC., D.R. HORTON-BIRMINGHAM, BETHEL ENGINEERING, A, B, C, D, E, and/or F being those persons, corporations, firms or entities who were the engineers, designers, developers, contractors, subcontractors, agents, entities or other persons whose conduct caused or contributed to the deceptive acts by the Defendant's for which have caused damages to the Plaintiffs, G, H, I, J, K, and/or L, being those persons, corporations, firms or other entities responsible for creating, causing and/or continuing to commit a nuisance, trespass, negligence, or wantonness causing damage to the Plaintiffs, the identities of said fictitious parties being unknown to the Plaintiffs at present or if known, the identities as proper parties cannot be ascertained at this time, but will be substituted by amendment upon learning their true identity, unless otherwise stated, the word, Defendant shall include all Defendants, including those presently denominated as fictitious parties, Defendants.

Defendants.

NOTICE OF APPEARANCE

Comes now the undersigned attorney, STEVEN D. HAZELWOOD, and hereby gives notice of appearance as retained counsel of record for Plaintiffs, MICHAEL MORTON, et al.

Respectfully submitted November 24, 2021,

/s/ Steven D. Hazelwood  
STEVEN D. HAZELWOOD (HAZ-004)  
shazelwood@hazelwoodfirm.com  
Attorney for Plaintiff

OF COUNSEL:

Hazelwood Firm LLC  
440 River Route  
Magnolia Springs, AL 36555  
251.510.6969



OF COUNSEL:

SHELLER LAW FIRM, PLLC  
360 FM 1959  
Houston, TX 77034

OF COUNSEL:

Wilkins, Bankester, Biles & Wynne, P. A.  
P. O. Box 400  
Bay Minette, AL 36507  
251.937.7024

### **CERTIFICATE OF SERVICE**

Pursuant to Rule 5, *Ala. R. Civ. P.*, on November 24, 2021, I hereby certify that I electronically filed the foregoing pleading with the Clerk of Court by electronically filing on the Alacourt/AlaFile system, which transmits a true and correct copy of this pleading to all counsel of record for:

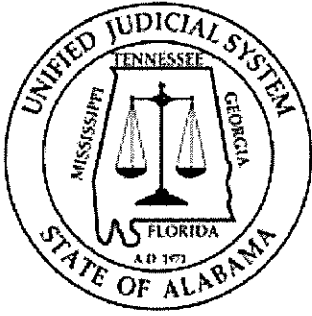
D. R. Horton, Inc. – Birmingham  
CT Corporation  
2 N. Jackson Street  
Suite 605  
Montgomery, Alabama 36104

D. R. Horton, Inc.  
301 Commerce Street  
Fort Worth, Texas 76102

Bethel Engineering  
Robert Galloway  
3263 Cottage Hill Road  
Mobile, Alabama 36606

s/Steven D. Hazelwood  
Steven D. Hazelwood





## AlaFile E-Notice

05-CV-2021-901218.00

To: STEVEN DOUGLAS HAZELWOOD  
shazelwood@hazelwoodfirm.com

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To: D.R. HORTON, INC. - BIRMINGHAM (PRO SE)  
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## AlaFile E-Notice

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To: SHELLER DAVID LEIGH  
david@shellerlawfirm.com

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jody.wise@alacourt.gov



## STATE OF ALABAMA

Revised 3/5/08

Unified Judicial System

05-BALDWIN

☐ District Court☒ Circuit Court

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12/2/2021 7:52 AM

05-CV-2021-901218.00

CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

JODY L. WISE, CLERK

CV2

## CIVIL MOTION COVER SHEET

MICHAEL MORTON ET AL V. D.R. HORTON, INC. -  
BIRMINGHAM ET AL

Name of Filing Party:

C001 - MORTON MICHAEL  
 C002 - MORTON LISA  
 C003 - SMITH JEREMY  
 C004 - SMITH LINDSEY  
 C005 - BLAUNER ROBERT  
 C006 - BLAUNER PAMELA  
 C007 - TOTH KIRK  
 C008 - ROBINSON HERBERT  
 C009 - ROBERSON AMANDA  
 C010 - SLATER LANCE COLE  
 C011 - WILLIAMS TROY  
 C012 - BAKER JOSH  
 C013 - STANLEY ROBERT  
 C014 - STANLEY DARBI  
 C015 - DOUGLAS SHELBY  
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 C018 - BEAL MATTHEW  
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 C086 - HARPER RICHARD  
 C087 - HINTZ CYNTHIA  
 C088 - CAMPBELL TODD

Name, Address, and Telephone No. of Attorney or Party. If Not Represented.

JOSEPH THOMAS PILCHER

PO Box 400

Bay Minette, AL 36507

Attorney Bar No.: PIL013

☐ Oral Arguments Requested

### TYPE OF MOTION

#### Motions Requiring Fee

- ☐ Default Judgment (\$50.00)  
 Joinder in Other Party's Dispositive Motion  
 (i.e. Summary Judgment, Judgment on the Pleadings,  
☐ or other Dispositive Motion not pursuant to Rule 12(b))  
 (\$50.00)
- ☐ Judgment on the Pleadings (\$50.00)
- ☐ Motion to Dismiss, or in the Alternative  
 Summary Judgment (\$50.00)
- ☐ Renewed Dispositive Motion (Summary  
 Judgment, Judgment on the Pleadings, or other  
 Dispositive Motion not pursuant to Rule 12(b)) (\$50.00)
- ☐ Summary Judgment pursuant to Rule 56 (\$50.00)
- ☐ Motion to Intervene (\$297.00)
- ☐ Other \_\_\_\_\_  
 pursuant to Rule \_\_\_\_\_ (\$50.00)

\*Motion fees are enumerated in §12-19-71(a). Fees  
 pursuant to Local Act are not included. Please contact the  
 Clerk of the Court regarding applicable local fees.

☐ Local Court Costs \$ 0 \_\_\_\_\_

#### Motions Not Requiring Fee

- ☐ Add Party
- ☐ Amend
- ☐ Change of Venue/Transfer
- ☐ Compel
- ☐ Consolidation
- ☐ Continue
- ☐ Deposition
- ☐ Designate a Mediator
- ☐ Judgment as a Matter of Law (during Trial)
- ☐ Disburse Funds
- ☐ Extension of Time
- ☐ In Limine
- ☐ Joinder
- ☐ More Definite Statement
- ☐ Motion to Dismiss pursuant to Rule 12(b)
- ☐ New Trial
- ☐ Objection of Exemptions Claimed
- ☐ Pendente Lite
- ☐ Plaintiff's Motion to Dismiss
- ☒ Preliminary Injunction
- ☐ Protective Order
- ☐ Quash
- ☐ Release from Stay of Execution
- ☐ Sanctions
- ☐ Sever
- ☐ Special Practice in Alabama
- ☐ Stay
- ☐ Strike
- ☐ Supplement to Pending Motion
- ☐ Vacate or Modify
- ☐ Withdraw
- ☐ Other \_\_\_\_\_  
 pursuant to Rule \_\_\_\_\_ (Subject to Filing Fee)



Check here if you have filed or are filing contemporaneously with this motion an Affidavit of Substantial Hardship or if you are filing on behalf of an agency or department of the State, county, or municipal government. (Pursuant to §6-5-1 Code of Alabama (1975), governmental entities are exempt from prepayment of filing fees) ☐

Date:  
12/2/2021 7:49:46 AM


Signature of Attorney or Party  
/s/ JOSEPH THOMAS PILCHER

\*This Cover Sheet must be completed and submitted to the Clerk of Court upon the filing of any motion. Each motion should contain a separate Cover Sheet.

\*\*Motions titled 'Motion to Dismiss' that are not pursuant to Rule 12(b) and are in fact Motions for Summary Judgments are subject to filing fee.



ELECTRONICALLY FILED  
12/2/2021 7:52 AM  
05-CV-2021-901218-00  
CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA  
JODY L. WISE, CLERK



IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA

MICHAEL MORTON, et. al., )  
)  
Plaintiffs )  
)  
vs. )  
)  
D.R. HORTON, INC., et. al., )  
)  
Defendants )

Case No. CV-2021-901218

MOTION FOR HEARING ON PLAINTIFFS' APPLICATION FOR PRELIMINARY  
INJUNCTION

COME NOW, the Plaintiffs, and respectfully move this Honorable Court to schedule a special setting for a hearing on the Plaintiffs' Motion for Preliminary Injunction. As grounds for this Motion, Plaintiffs offer the following:

1. Within the filing of the Initial Complaint, the Plaintiffs requested a Permanent Injunction pursuant to stop the Defendants from constructing residential homes in Baldwin County, Alabama, in a manner that is not meeting the standards of the IBHS guidelines, gold fortification, as advertised, and the County and/or Municipality building codes. At this current time, the Defendants have multiple residential homes being constructed, and are being marketed as gold fortified homes, just as alleged in this Complaint. The actions described, in violation of the Deceptive Trade Practices



Act, are continuing and are causing continued immediate and irreparable harm to the Baldwin County, Alabama, community. As a result, and pursuant to the statute, Code of Alabama, 1975, Section 8-19-1, et. seq., the Plaintiffs are now requesting a Preliminary Injunction to enjoin the Defendants from construction within Baldwin County, Alabama.

2. The undersigned reasonably anticipates the hearing requested will last approximately a half day.
3. The issues raised by the Plaintiffs require an immediate hearing as Plaintiffs allege immediate and irreparable harm that is currently occurring. A copy of affidavits in support are attached as Exhibits 1, 2, and 3 and are incorporated hereto.
4. Plaintiffs allege that if a preliminary injunction is not granted, there will be irreparable harm, and that said harm will outweigh any consequences for which the Defendants may suffer as a result thereof.
5. Plaintiffs have a significant likelihood of success on the merits, as demonstrated in the attached Affidavits attached as Exhibits 1, 2, and 3.

WHEREFORE, PREMISES CONSIDERED, Plaintiffs respectfully request this Honorable Court issue an Order granting this Motion and set this matter for an immediate hearing on the Plaintiffs'



Application for Preliminary Injunction to allow the parties to present testimony and other relevant evidence.

Respectfully submitted,

By: /S/ J. THOMAS PILCHER, IV  
J. Thomas Pilcher, IV (PIL013)  
Attorney for Plaintiffs

By: /S/ David L. Sheller  
David L. Sheller (SHE026)  
Attorney for Plaintiffs

WILKINS, BANKESTER, BILES  
& WYNNE, P.A.  
PO Box 400  
Bay Minette, AL. 36507  
251-937-7024  
[tpilcher@wbbwlaw.com](mailto:tpilcher@wbbwlaw.com)

SHELLER LAW FIRM, PLLC  
360 FM 1959  
Houston, TX 77034  
832-841-1175  
[david@shellerlawfirm.com](mailto:david@shellerlawfirm.com)

**CERTIFICATE OF SERVICE**

I hereby certify that I have on this the 2<sup>nd</sup> day of December, 2021, served a copy of the foregoing on the following through the Circuit Clerk, via AlaFile, and on unserved parties as follows:

D.R. Horton, Inc. - Birmingham  
CT Corporation  
2 N. Jackson Street  
Suite 605  
Montgomery, Alabama 36104



D.R. Horton, Inc.  
301 Commerce Street  
Fort Worth, Texas 76102

Bethel Engineering  
Robert Galloway  
3263 Cottage Hill Road  
Mobile, Alabama 36606

J. Thomas Pilcher, IV  

---

J. THOMAS PILCHER, IV

DOCUMENT 16





## AlaFile E-Notice

05-CV-2021-901218.00

Judge: JODY W. BISHOP

To: JOSEPH THOMAS PILCHER  
tpilcher@wbbwlaw.com

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# NOTICE OF ELECTRONIC FILING

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IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA

MICHAEL MORTON ET AL V. D.R. HORTON, INC. - BIRMINGHAM ET AL  
05-CV-2021-901218.00

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**C088 CAMPBELL TODD**

**MOTION FOR PRELIMINARY INJUNCTION**

**[Filer: PILCHER JOSEPH THOMAS IV]**

Notice Date: 12/2/2021 7:53:02 AM

JODY L. WISE  
CIRCUIT COURT CLERK  
BALDWIN COUNTY, ALABAMA  
312 COURTHOUSE SQUARE  
SUITE 10  
BAY MINETTE, AL, 36507

251-937-9561  
jody.wise@alacourt.gov





## AlaFile E-Notice

05-CV-2021-901218.00

Judge: JODY W. BISHOP

To: D.R. HORTON, INC. - BIRMINGHAM (PRO SE)  
2 N. JACKSON STREET  
SUITE 605  
MONTGOMERY, AL, 36104-0000

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251-937-9561  
jody.wise@alacourt.gov





## AlaFile E-Notice

05-CV-2021-901218.00

Judge: JODY W. BISHOP

To: D.R. HORTON, INC. (PRO SE)  
301 COMMERCE STREET  
FORT WORTH, TX, 76102-0000

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Judge: JODY W. BISHOP

To: BETHEL ENGINEERING, INC. (PRO SE)  
3263 COTTAGE HILL ROAD  
MOBILE, AL, 36606-0000

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BAY MINETTE, AL, 36507

251-937-9561  
jody.wise@alacourt.gov





## AlaFile E-Notice

05-CV-2021-901218.00

Judge: JODY W. BISHOP

To: SHELLER DAVID LEIGH  
david@shellerlawfirm.com

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# NOTICE OF ELECTRONIC FILING

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IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA

MICHAEL MORTON ET AL V. D.R. HORTON, INC. - BIRMINGHAM ET AL  
05-CV-2021-901218.00

The following matter was FILED on 12/2/2021 7:53:02 AM

C001 MORTON MICHAEL  
C002 MORTON LISA  
C003 SMITH JEREMY  
C004 SMITH LINDSEY  
C005 BLAUNER ROBERT  
C006 BLAUNER PAMELA  
C007 TOTH KIRK  
C008 ROBINSON HERBERT  
C009 ROBERSON AMANDA  
C010 SLATER LANCE COLE  
C011 WILLIAMS TROY  
C012 BAKER JOSH  
C013 STANLEY ROBERT  
C014 STANLEY DARBI  
C015 DOUGLAS SHELBY  
C016 BENDER JOHN  
C017 BENDER TENA  
C018 BEAL MATTHEW  
C019 BEAL CHEYENNE  
C020 PERRY CECIL  
C021 PERRY NANCY  
C022 DAVIS CHRISTOPHER  
C023 ROBERTS HANNIS  
C024 LAIRSON CARLIS



C025 LAIRSON SHERI  
C026 KALIS JESS  
C027 KALIS KATHY  
C028 DIXON CHRISTI  
C029 MERRIWEATHER ANDREW RAY  
C030 MERRIWEATHER HEATHER  
C031 MCCANE GERI LYNN  
C032 MITCHELL EDWARD  
C033 HAMDAN SAGER J.  
C034 ASHTON ROY  
C035 ASHTON MICHELLE  
C036 GARRISON SEAN  
C037 CALLAGHAN PATRICK  
C038 CALLAGHAN LIZ  
C039 SUMRALL LAUREN  
C040 HOOTS NICHOLAS  
C041 HODSON DAN  
C042 WHITE JANET  
C043 DAVIS HEIDI  
C044 WEST NICHOLAS  
C045 HINOTE BRENDA LYNN  
C046 SETTLES ROY  
C047 COOLEY ADAM  
C048 VONTROBA MARK  
C049 SANDERS CHRISTOPHER LEE  
C050 BUTLER CHRIS  
C051 BUTLER CRYSTAL  
C052 MESSER GEORGE  
C053 MESSER KATHLEEN  
C054 PARNELL BRENT  
C055 PARNELL TAMMY  
C056 STEWART JAMES  
C057 FUNDERBURG JAMES  
C058 FUNDERBERG ARIEL HALEY  
C059 PERMANAND NADA BLAMACHAN  
C060 KENT TIM  
C061 KENT STACIE  
C062 GIER TIMOTHY  
C063 GIER MICHELLE  
C064 SULLIVAN RICK  
C065 SULLIVAN MELISSA  
C066 OWSLEY DANIEL  
C067 TAYLOR CHRISTOPHER  
C068 MATTISON SHARRON  
C069 HARRISON DAVID  
C070 HARRISON ROXANNE



**C071 WINCHESTER SARA**

**C072 OWENS TERRIE**

**C073 OWENS DAVID**

**C074 BOGL JOHN**

**C075 BOGL TIFFANY**

**C076 WIGER STEVE**

**C077 MADDOX JERRY**

**C078 NGUYGEN LOAN M.**

**C079 WHITE JAMES**

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**C082 MILES CODY**

**C083 REED VICTORIA MILES**

**C084 WHITE BENJAMIN**

**C085 BLAKE JACOB VAN**

**C086 HARPER RICHARD**

**C087 HINTZ CYNTHIA**

**C088 CAMPBELL TODD**

**MOTION FOR PRELIMINARY INJUNCTION**

[Filer: PILCHER JOSEPH THOMAS IV]

Notice Date: 12/2/2021 7:53:02 AM

JODY L. WISE  
CIRCUIT COURT CLERK  
BALDWIN COUNTY, ALABAMA  
312 COURTHOUSE SQUARE  
SUITE 10  
BAY MINETTE, AL, 36507

251-937-9561  
jody.wise@alacourt.gov





## AlaFile E-Notice

05-CV-2021-901218.00

Judge: JODY W. BISHOP

To: HAZELWOOD STEVEN DOUGLAS  
shazelwood@hazelwoodfirm.com

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# NOTICE OF ELECTRONIC FILING

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IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA

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**MOTION FOR PRELIMINARY INJUNCTION**

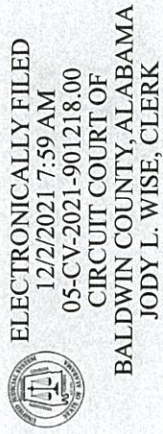
[Filer: PILCHER JOSEPH THOMAS IV]

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**AFFIDAVIT OF DAVID KOSNIK, Ph.D., P.E.**  
**Re: CTLGroup Investigation of Residential Construction**  
**in Various Sub-Divisions Located in the State of Alabama**

I, David Kosnik, state that I have personal knowledge of the facts stated herein and if called as a witness in this case, I can competently testify to the matters stated in this Affidavit:

I am over the age of 18.

I am a licensed Professional Engineer in the state of Alabama. I am also licensed as a Professional Engineer in several other states.

I hold a B.Sc. degree in Computer Engineering and M.Sc. and Ph.D. degrees in Civil Engineering from Northwestern University, Evanston, Illinois.

I am currently a Senior Engineer with CTLGroup, a consulting and testing firm headquartered in Skokie, Illinois. CTLGroup specializes in, amongst other services, the assessment of structural and building envelope integrity, the analysis of construction defects, and the design of recommended repairs.

In my role as a Senior Engineer with CTLGroup, I served as the engineer-in-responsible-charge for the preparation of several reports documenting CTLGroup's investigation and findings related to the residential construction in various sub-divisions located within the state of Alabama.

Attached hereto as Exhibit A is a true and correct copy of my Curriculum Vitae.

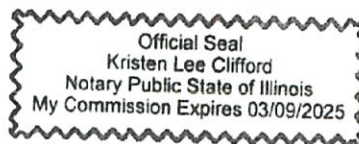
Attached hereto as Exhibit B are copies of the above-referenced reports documenting the CTLGroup investigation and findings. The findings documented within these reports have been determined to a reasonable degree of engineering certainty.

Further affiant sayeth naught.

  
 David Kosnik

Subscribed and sworn before me this 17<sup>th</sup> day of November, 2021.

  
 Notary Public



**Attachment A:**

Kosnik Curriculum Vitae

**Attachment B:**

CTLGroup reports dated September 17, 2021 and October 13, 2021





**Exhibit A**

Kosnik Curriculum Vitae





## David Kosnik, Ph.D., P.E.

### SENIOR ENGINEER

Dr. Kosnik draws from his dual background in civil and computer engineering to develop innovative performance monitoring and evaluation solutions for in-service infrastructure. His experience includes both long-term, continuous remote monitoring and short-term tests of occupied buildings, in-service bridges and structures, industrial facilities, movable structures, structures subject to ground vibration, and infrastructure vulnerable to hydraulic and geo-hazards. In addition, Dr. Kosnik is recognized internationally for his applications of acoustic emission technology to diagnose and evaluate structures and mechanical systems.

Dr. Kosnik's monitoring strategies link measured quantities to specific limit states or performance metrics to support infrastructure management decisions, particularly those related to risk management, beyond-design-basis events, evaluation of retrofits and life extension efforts, characterization of damage progression, and early warning of possible disruption. In addition, he has developed software and methods to support aggregation and analysis of large, heterogeneous data sets ("big data") for structural/mechanical performance monitoring, forensic engineering, and root cause analysis. His experience in forensic engineering and failure analysis also includes determination of causes and extents of reported damage from severe weather, accidental explosions, and other phenomena on behalf of a major insurance carrier.

Prior to joining CTLGroup, Dr. Kosnik was a researcher at the Northwestern University Infrastructure Technology Institute, a multi-disciplinary center dedicated to research, education, and technology transfer to improve the nation's transportation infrastructure.

Dr. Kosnik has authored a number of peer-reviewed journal articles and conference papers on structure monitoring, acoustic emission technology, and computing in civil engineering, and speaks at national and international technical symposia on a regular basis. He has taught units in structural investigation and monitoring in civil engineering courses and serves as a peer reviewer for academic journals, industry publications, and conferences.

### Representative Project Experience

#### Forensic Engineering and Failure Analysis

- As part of litigation regarding structural damage allegedly caused by blast-induced ground vibration from a limestone quarry, developed software and methods to analyze 35,000 pages of records from 30 years of blasting and visualize the results in time and space. Analyzed blast designs and vibration data to evaluate damage claims.
- Conducted inspections of residences with reported damage from hurricane effects, hail, fallen trees, explosions at nearby industrial facilities, and other phenomena on behalf of a major insurance carrier at sites in Illinois, Louisiana, Ohio, and Texas. Scope of the inspections included determination of causes and extents of reported damage as well as recommendations of conceptual repairs. Deployed small unmanned aerial systems to obtain high quality imagery of areas that were difficult or unsafe to reach.
- Investigated ceiling collapse in a repurposed underground limestone mine, including planning and execution of small unmanned aerial system flights within the cavern to collect imagery safely from areas of ongoing rockfall.

#### Technology Development and Industrial Research

- Ongoing development of data acquisition, aggregation, and visualization software and methodologies for experimental evaluation of industrial process control devices at a Fortune 500 company.
- Developed and deployed scalable, extensible, and adaptable data aggregation and Web-enabled visualization tools for engineering data obtained from 27 remote structure performance/health monitoring installations in 11 states and DC.

### Academic Credentials

Ph.D. in Civil Engineering  
Northwestern University, 2012

M.S. in Civil Engineering  
Northwestern University, 2009

B.S. in Computer Engineering  
Northwestern University, 2003

### Licensure/Certification

Professional Engineer  
AL, FL, IL, KY, LA, MN,  
NY, OH, TN, TX, WA, WI

NCEES Record

FAA Part 107 sUAS ("drone")  
Remote Pilot Certificate

PADI Adv. Open Water Diver

### Contact Information

5400 Old Orchard Road  
Skokie, Illinois 60077

(847) 972-3280

DKosnik@CTLGroup.com

ORCID Record  
(publications, reviewer service, etc.)

 <https://orcid.org/0000-0001-9296-8657>





**David Kosnik,  
Ph.D., P.E.**

#### **Performance Monitoring and Dynamic Characterization of In-Service Structures**

- Designed and deployed an automated system to measure dynamic response of a several-hundred-foot-long pipe support structure at an energy facility to characterize its behavior under unanticipated flow regimes.
- Designed, deployed, and operated a system for monitoring differential settlement/heave related to alkali-silica reactivity on concrete pedestal structures for two 34-meter antennas of the NASA/JPL Deep Space Network. As the antennas are used to communicate with distant spacecraft, even relatively small pedestal displacements may impact mission performance.
- Led installation and operation of a combined bridge structural monitoring and weigh-in-motion system on a logging-truck-route bridge in northern Wisconsin; the acquired data were used to evaluate effects of increased truck weight limits on the structure.
- Managed system installation and data analysis for continuous remote monitoring of a Chicago Transit Authority elevated train overpass to evaluate retrofit performance.
- Conducted field tests of on the East Huntington Bridge (Huntington, West Virginia) to characterize the dynamic response of stay cables and to obtain measurement-based estimates of cable damping and tension as part of a recurring inspection program.

#### **Infrastructure Monitoring for Risk Management:**

##### **Adjacent Construction, Resource Extraction, and Geo-Hazards**

- Deployed a system of monitoring devices to help a prominent Chicago-area university manage structural/foundation risks associated with demolition and new construction on an urban campus. This distributed system of ground vibration, foundation settlement, and structure tilt measurements quantified possible effects of the work on an adjacent building owned and occupied by a third party.
- Deployed and operated an automated vibration monitoring system for a historic building in Washington, DC during reconstruction of an adjacent city street. The system characterized vibration and corresponding building response while meeting strict federal requirements for historic preservation and site security.
- Led system installation and data analysis for continuous remote monitoring of structure response to limestone quarry blasting at sites in Florida and Illinois.
- Developed software and methods to support interpretation of real-time and historic data from (1) tilt-based scour monitoring at seven highway bridges across California and (2) time-domain reflectometry monitoring against sinkhole, slope instability, and mine subsidence hazards in Ohio, Indiana, and Florida.

##### **Acoustic Emission (AE) Technology**

- Several years of AE monitoring of life extension efforts related to trunnion bearings on a 100+ year old bascule bridge carrying a Class I railroad over a commercial waterway.
- Conducted AE field tests to identify source locations of audible noises during operation of movable stadium roof (Miller Park, Milwaukee, Wisconsin).
- Provided hardware and software training to new AE users (conservators of 3D objects at a prominent art museum)
- Conducted AE tests during commissioning of a new swing bridge carrying a four-lane arterial street over a commercial waterway to locate and characterize unexpected noises during movements. Analysis identified two unrelated noise mechanisms that had been indistinguishable during previous investigations by ear alone.
- Conducted AE tests to locate sources of anomalous audible noises during commissioning of a new rolling bascule bridge carrying a city street over a commercial waterway. The noises were found to be benign and the bridge opened on schedule.
- Deployed AE monitoring during standardized fatigue testing of large steel castings to characterize development and progression of cracks.

DOCUMENT 18



David Kosnik,  
Ph.D., P.E.

## Professional Affiliations and Committee Service

### Transportation Research Board of the National Academies

- Standing Committee AKB40: Testing and Monitoring of Transportation Structures
  - Committee Chair (April 2021 - present)
  - Committee Member and Secretary (2010-2019)
  - Ad-hoc subcommittee on load test manual revisions (2017 - 2020)

Member of Task Force ABR35T: UTC Spotlight Conference "Rebuilding and Retrofitting the Transportation Infrastructure" (2017-2018)

Member of Task Force ABJ25T: Traffic Monitoring Conferences (2013-2014)

Structural Health Monitoring Joint Subcommittee (active 2009-present)

Weigh-in-Motion Subcommittee (active 2009-present)

### Acoustic Emission Working Group - Fellow

- Past Chairman (term ending 2021)
- Chairman, 2015-2019 (two terms)
- Vice-Chairman, 2013-2015
- Secretary, 2011-2013

### Int'l Institute for Innovative Acoustic Emission - Fellow

### American Society of Civil Engineers - Member

### Academy of Model Aeronautics - Member

### Peer Reviewer Service

- Journal of Structural Engineering*
- Journal of Bridge Engineering*
- Journal of Infrastructure Systems*
- Journal of Civil Structural Health Monitoring*
- Sensors*
- Materials Evaluation (ASNT)*
- Transportation Research Board Annual Meeting and many other conferences

## Publications

### Journal Articles

Alampalli, S., D. Frangopol, J. Grimson, M. Halling, D. Kosnik, E. Lantosght, D. Yang, and Y. Zhou (2021). "Bridge load testing: State-of-the-Practice". *Journal of Bridge Engineering* 26(3), doi:10.1061/(ASCE)BE.1943-5592.0001678.

Kosnik, D. and C. Dowding (2014). "Autonomous monitoring of dynamic response of in-service structures for decision support." *Journal of Structural Engineering* 141(1), doi:10.1061/(ASCE)ST.1943-541X.0001044.

Kosnik, D., W. Zhang, and P. Durango-Cohen. (2014). "Application of statistical process control for structural health monitoring of a historic building." *Journal of Infrastructure Systems* 20(1), doi:10.1061/(ASCE)IS.1943-555X.0000164.

Kosnik D. and L. Henschen. (2013). "Design and interface considerations for Web-enabled data management in civil infrastructure health monitoring." *Lecture Notes in Computer Science* 8005:107-116 (Human-Computer Interaction Part II), doi:10.1007/978-3-642-39262-7\_13.

Kosnik, D., T. Hopwood, M. Kotowsky, D. Corr, and D. Marron. (2010). "Continuous remote structural health monitoring for life extension of an uplift bearing assembly on a large cantilever truss bridge". *Transportation Res. Record* 2201:139-147, doi:10.3141/2201-16.

Kosnik, D. (2009). "Acoustic emission testing of a difficult-to-reach steel bridge detail". *Journal of Acoustic Emission* 27:11-17.



**David Kosnik,  
Ph.D., P.E.**

#### Peer-Reviewed Conference Proceedings Papers

Kosnik, D. and D. McCann (in process). "A Tale of Two Clients: Case Studies in Adjacent Construction Risk Management". Accepted for publication in *Proceedings, 9th Forensic Engineering Conference* (Denver, Colorado; November 2022). American Society of Civil Engineers, Reston Virginia.

Kosnik, D. (2016). "Review of acoustic emission source mechanisms on large movable structures" [invited paper]. In *Progress in Acoustic Emission XVIII: Proc. 23rd Int'l Acoustic Emission Symposium* (IAES-23/ICAE-8, Kyoto), pp. 447-455. Japanese Society for Non-Destructive Inspection, Tokyo.

Kosnik, D. (2014). "Brief review of acoustic emission monitoring on two movable bridges". In *Progress in Acoustic Emission XVII: Proc. 22nd Int'l Acoustic Emission Symposium* (IAES-22 Sendai), pp. 61-66. Japanese Society for Non-Destructive Inspection, Tokyo.

Kosnik, D. (2012). "A combined weigh-in-motion and structural health monitoring system on a Wisconsin-Michigan border bridge". In *Proceedings, 6th Int'l Conference on Weigh-in-Motion*. Wiley-ISTE.

Kosnik, D., T. Hopwood, and D. Corr. (2010). "Acoustic emission monitoring for assessment of steel bridge details". In *Review of Progress in Quantitative Nondestructive Evaluation, Vol. 30B*. American Institute of Physics, Melville, New York.

Kosnik, D., D. Marron, D. Corr, and M. Kotowsky. (2010) "Noise localization via acoustic emission monitoring on a rolling bascule bridge". In *Proceedings, 2010 International Bridge Conference*. Engineers' Society of Western Pennsylvania. Paper No. IBC-10-68.

Kosnik, D., M. Kotowsky, D. Marron, C. Dowding, and R. Finno. (2010). "Autonomous Condition Monitoring of an In-Service Historic Utility Tunnel". In *Compendium of Papers, 89th Annual Meeting of the Transportation Research Board*. Paper ID 10-2422.

Kosnik, D. (2009). "Autonomous crack displacement monitoring of a residence near a quarry". In *Proceedings, 35th Annual Conference on Explosives and Blasting Technique*. Int'l Society of Explosives Engineers, Cleveland, Ohio.

Kosnik, D. and T. Hopwood. (2008). "Monitoring of in-situ strains in bearing assembly anchor bolts on a large through-truss bridge". In *Proceedings, SMT 2008: NDE/NDT for Highways and Bridges*, pp. 233-239. American Society for Nondestructive Testing, Columbus, Ohio.

Kosnik, D. and D. Marron. (2007). "Acoustic emission evaluation of retrofits on the I-80 Brite Bend Bridge, Sacramento, California". In *Advances in Acoustic Emission: Proc. Sixth International Conference on Acoustic Emission* (Kanji Ono, editor), Acoustic Emission Working Group, Colorado, USA. Pages 179-183.

Kosnik, D. (2007). "Internet-Enabled Geotechnical Data Exchange". In *Proceedings, FMGM 2007: Int'l Symposium on Field Measurements in Geomechanics*. Geotechnical Special Publication No. 175, American Society of Civil Engineers, Reston, Virginia.

Kosnik, D., M. Kotowsky, C. Dowding, and R. Finno (2007). "Case studies in integrated autonomous remote monitoring". In *Proceedings, FMGM 2007: Int'l Symposium on Field Measurements in Geomechanics*. Geotechnical Special Publication No. 175, American Society of Civil Engineers, Reston, Virginia.

Kosnik, D. (2006). "Internet-enabled remote monitoring of civil infrastructure with TDR." In *Proceedings, TDR 2006* (Paper ID 6). Purdue University, West Lafayette, Indiana



**David Kosnik,  
Ph.D., P.E.**

#### **Selected Technical Reports and White Papers**

Kosnik, D. and S. Ng. (2010). "White Paper: Tiltmeter-Based Bridge Scour Monitoring". Infrastructure Technology Institute, Northwestern University, Evanston, Illinois. 10 pp.

Kosnik, D. (2010). "Structural health monitoring of uplift bearings on the John F. Kennedy Memorial Bridge: interim report". Infrastructure Technology Institute technical report. Northwestern University, Evanston, Illinois. 84 pp.

Kosnik, D., D. Marron, M. Kotowsky, D. Corr, and D. Prine. (2009). "Noise localization via acoustic emission monitoring on a rolling leaf bascule bridge". Infrastructure Technology Institute technical report. Northwestern University, Evanston, Illinois. 19 pp.

Thomas, J., D. Kosnik, M. Kotowsky, D. Marron, and J. Schofer. (2008). "Structural health monitoring of civil infrastructure: philosophy, technical methods, and projects of the Infrastructure Technology Institute". Infrastructure Technology Institute technical report. Northwestern University, Evanston, Illinois. 29 pp.

Kosnik, D. (2008). "Autonomous remote crack displacement monitoring of a residence near a limestone quarry, Naples, Florida". Infrastructure Technology Institute technical report. Northwestern University, Evanston, Illinois. 38 pp.

#### **Invited Lectures**

"Data Aggregation and Statistical Process Control Methods for NDE and SHM of Civil Structures". Innovative Non-Destructive Testing for Civil Engineers workshop. Waikoloa, Hawaii, November 21-22, 2019.

"Structural Health Monitoring for Limit States Other Than 'Failure'". Northwestern University, Evanston, Illinois, October 30, 2019.

"Managing Adjacent Construction Risks with Autonomous Remote Monitoring: Case Studies from the Chicago Region". ASCE Illinois Section/Geo-Institute Chicago Meeting. Chicago, Illinois, November 13, 2018.

"Some Specialty Tools for the Bridge Inspection and Performance Monitoring Toolbox". New York State Dept. of Transportation Bridge Inspectors' Meeting. Saratoga Springs, New York, March 6, 2018.

"Performance Monitoring of In-Service Infrastructure: Life Extension and Beyond-Design-Basis Loads". Innovative Non-Destructive Testing for Civil Engineers workshop. Koloa, Hawaii, November 21-23, 2017.

#### **Conferences and Seminars**

##### **Presenter/Panelist**

"Introducing the Bridge Load Testing E-Circular". Workshop at Transportation Research Board 99th Annual Meeting, Washington, DC, January 12, 2020.

"3D Printing for AE: Acoustic properties of 3D-Printed Materials and Development of Custom AE Fixtures" (with J. Juliano, R. Nordstrom, and S. Anderson). Acoustic Emission Working Group. Chicago, Illinois, June 2019.

"Adjacent Construction: Hazards, Vulnerabilities, and Risk Management". ASCE Forensic Engineering 8th Congress – Forging Forensic Frontiers, Austin, Texas, December 1, 2018.

"A Dynamic Experience: The Dowding / ITI Legacy of Autonomous Monitoring of In-Service Infrastructure". Charles H. Dowding Symposium on Geotechnical Engineering. Northwestern University, Evanston, Illinois, April 28, 2018.

"AE Noise Source Location on a Strauss-style Trunnion Bascule Bridge". Acoustic Emission Working Group. Seattle, Washington, May 2017.



**David Kosnik,  
Ph.D., P.E.**

#### **Presenter/Panelist, continued**

"AE Leak Rate Prediction: Some New Applications to Control Valves." (with S. Jelken, R. Nordstrom, and S. Anderson). Acoustic Emission Working Group. Chicago, Illinois, June 2015.

"Relational Database Approach to AE Test Data and Metadata Management: Recent Work at Fisher Controls". Acoustic Emission Working Group. Salt Lake City, Utah, June 2014.

"Acoustic Emission Monitoring to Locate and Characterize Anomalous Noises on a Swing Bridge." (with D. Marron). Acoustic Emission Working Group. Anaheim, California, June 2013.

#### **Chair/Moderator**

Workshop: "Practical Health Monitoring for Transportation Structures II" (with N. Catbas) Transportation Research Board 92nd Annual Meeting. Washington, DC, January 13, 2013

Workshop: "Practical Health Monitoring for Transportation Structures" (with N. Catbas) Transportation Research Board 91st Annual Meeting. Washington, DC, January 22, 2012

#### **Conference Organizer/Host**

Int'l Conference on Acoustic Emission and Acoustic Emission Working Group (ICAE-9/AEWG-61). Chicago, Illinois, June 17-20, 2019

Acoustic Emission Working Group (AEWG-59). Seattle, Washington, May 17-18, 2017

Acoustic Emission Working Group (AEWG-52). Sturgeon Bay, Wis., Oct. 19-21, 2009

#### **Conference Technical Committee or Advisory Board Member**

25th Int'l Acoustic Emission Symposium (IAES-25), Tokyo, Japan, November 2020 (postponed)

Structural Health Monitoring for Intelligent Infrastructure (SHMII-9), St. Louis, Missouri, August 2019

8th Int'l Conference on Acoustic Emission and 23rd Int'l Acoustic Emission Symposium (ICAE-8 / IAES-23), Kyoto, Japan, December 2016

22nd Int'l Acoustic Emission Symposium (IAES-22), Sendai, Japan, November 2014

#### **Prior Professional Experience**

Northwestern University, Evanston, Illinois

Research Engineer, Infrastructure Technology Institute, 2003-2013

#### **Related Experience and Training**

National Highway Institute Course 130055: Safety Inspection of In-Service Bridges

National Highway Institute Course 130078: Fracture-Critical Inspection Techniques

#### **Academic, Professional, and Community Honors**

2019 Joseph Kaiser Achievement Award, Acoustic Emission Working Group

2018 Fellow Award, Acoustic Emission Working Group

2012 Grassroots Conservation Leadership Award, Chicago Wilderness Habitat Project

2012 Best Presentation by a Young Researcher, Int'l Conf. on Weigh-in-Motion

2010 STAR Leadership Award, Northwestern Univ. McCormick School of Engineering

2008 Student Paper Award, Acoustic Emission Working Group

2000 Student of the Year Award, US DOT University Transportation Centers program (received as an undergraduate; award typically given to graduate students)



**Exhibit B**

CTLGroup reports dated September 17, 2021 and October 13, 2021





September 17, 2021

via email to: [david@shellerlawfirm.com](mailto:david@shellerlawfirm.com)

Mr. David L. Sheller  
The Sheller Law Firm, P.L.L.C.  
360 FM 1959  
Houston, Texas 77034

**Re: Summary of Construction Observations  
Hidden Lakes at Bon Secour and Other Subdivisions  
CTLGroup Project No. 000108**

Dear Mr. Sheller:

This summary letter addresses CTLGroup's investigation of construction conditions at the Hidden Lakes at Bon Secour subdivision (hereafter "Hidden Lakes") in Foley, Alabama and similar subdivisions elsewhere in Baldwin County.

To date, CTLGroup has performed a review of local code requirements and the Insurance Institute for Business and Home Safety (IBHS) standards for FORTIFIED HOME™ Hurricane Resistance. In February 2021, we performed a visual engineering inspection of nine homes at Hidden Lakes. CTLGroup also reviewed photographs taken by Team Complete Forensic and Building Services Company (hereafter "Team Complete") to document the nature and extent of certain construction conditions at additional homes at Hidden Lakes and at the following additional subdivisions:

- Aventura in Gulf Shores, AL
- Bellaton in Daphne, AL
- Blackstone Lakes in Daphne, AL
- Canaan Place in Daphne, AL
- Churchill in Spanish Fort, AL
- Diamante in Daphne, AL
- Fairhope Falls in Fairhope, AL
- Firethorne in Fairhope, AL
- Greenbrier in Fairhope, AL
- Harvest Meadows in Loxley, AL
- Island Woods in Gulf Shores, AL
- Jubilee Farms in Daphne, AL
- Old Field in Daphne, AL
- The Reserve in Daphne, AL
- Stonebridge in Spanish Fort, AL
- Valamour in Loxley, AL
- Villas at St. Charles in Daphne, AL
- Winged Foot in Daphne, AL

It is our understanding that all of the above developments were constructed by D. R. Horton, Inc.

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A summary of our code review is as follows.

- Hidden Lakes and the other subdivisions are situated in Baldwin County, Alabama.
- Baldwin County adopted the 2012 version of the International Code Council (ICC) group of model building codes on January 17, 2012. This code grouping includes the 2012 version of the International Residential Code (IRC).
- Baldwin County rescinded the 2012 versions of the ICC codes and adopted the 2018 versions effective May 21, 2019.<sup>1</sup>
- Baldwin County is located in a *Wind Borne Debris Region* according to IRC Figure R301.2(4)C.
- In 2012 design wind speeds in Baldwin County were designated<sup>2</sup> to be 130 MPH south of Interstate I-10. Hidden Lakes and the other subdivisions, with the exception of Churchill and Stonebridge in Spanish Fort, Alabama, are located south of I-10.
- Per the Baldwin County government website, "The Baldwin County building permit jurisdiction includes all unincorporated areas of Baldwin County..."<sup>3</sup>
- Baldwin County issued a *Supplemental Code in Addition to the 2012 International Residential Code*<sup>4</sup> that includes certain structural requirements.
- Based upon satellite imagery of Hidden Lakes, it appears that a set of homes on the east side of the Hidden Lakes development was constructed between approximately January 2015 and November 2017. A more recent group of homes on the west side appeared to have been constructed between November 2017 and January 2019 and were likely permitted between February and December 2018. Thus, the applicable building codes in effect at the time of construction for homes in the west portion of the Hidden Lakes subdivision was the 2012 IRC and the Baldwin County supplemental code. For purposes of this report, CTLGroup has assumed that the same building code requirements would apply to the other subdivisions.
- The most recent edition of the IBHS GOLD FORTIFIED HOME™ standard for hurricanes, high wind, and hail was published in 2020, and the IBHS standards for FORTIFIED HOME™ Hurricane Resistance were published in 2012 with supplemental technical bulletins issued up until March 2018. Therefore, based on the information obtained to date by CTLGroup, the applicable IBHS standard at the time of housing construction at Hidden Lakes was the 2012 version (with supplements). For purposes of this report,

<sup>1</sup> Resolution #2019-075 dated May 21, 2019

<sup>2</sup> Baldwin County Commission Agenda Action Form – Item BA4 Effective January 17, 2012. "Baldwin County enacted the 2012 code on January 17, according to Mike Howell, the county's building official". AL.com, Baldwin County cities gear up for stronger building codes – posted March 12, 2012

<sup>3</sup> <https://baldwincountyal.gov/departments/building-inspection>, accessed January 21, 2021

<sup>4</sup> Baldwin County Supplemental Code In Addition To The 2012 International Residential Code <http://openmeetings.baldwincountyal.gov/sirepub/cache/2/rssywsstfrxyh0uuoiqznbyiz/18606002042021025957627.PDF>, accessed February 1, 2021



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CTLGroup has assumed that the same IBHS standard would apply to the other subdivisions.

- CTLGroup understands that homes at Hidden Lakes were represented as meeting the IBHS Gold Certification, the highest level of wind resistance (i.e. above the Bronze and Silver designations), characterized by certain prescriptive construction details that, when satisfied, offered increased structure and component survivability during wind events. For purposes of this report, CTLGroup has assumed that the same representation was made for the other subdivisions.
- IBHS 2012 provides two pathways to Gold Certification. For simple homes, compliance with the prescriptive requirements in IBHS is verified through a Tier I inspection to establish compliance with the Bronze and Silver criteria, followed by a Tier II inspection of structural components, foundation, and connections. For other types of homes with more complex geometry, an investigation and report by a professional engineer may be required along with "*limited amounts of invasive investigation*".<sup>5</sup>
- The 2012 version of the IBHS standard is mainly organized to address retrofit of existing structures, however it appears that new construction could also be certified by IBHS through their Tier I and Tier II inspection and certification programs, or through an approved engineering design.
- CTLGroup understands that The Sheller Law Firm has requested permit drawings for homes at Hidden Lakes, but local permitting authorities have not released the documents because of reported copyright restrictions.
- Compliance with IBHS standards is documented through inspection by a *Certified Fortified Evaluator*, who has "*met the professional requirements for certification by the IBHS...*"<sup>6</sup>
- CTLGroup understands that The Sheller Law Firm has requested certification documents from IBHS for homes at Hidden Lakes, but IBHS has not yet provided these documents for review.

Based on our work to date, CTLGroup has developed the following findings related to Hidden Lakes and the other subdivisions:

- **Window Performance Ratings.** IBHS requires glazed openings to be rated for the appropriate *wind pressure* and *impact* resistance for their location and exposure. IRC R612.3 and R612.6 require labeling to identify the certification agencies, pressure and impact performance characteristics, and manufacturer. However, homes inspected to date did not have the required labels related to the *impact* resistance testing as required by IRC R612.6.1.

<sup>5</sup> 2012 IBHS standard for FORTIFIED HOME™ Hurricane Resistance, Appendix F

<sup>6</sup> 2012 IBHS standard for FORTIFIED HOME™ Hurricane Resistance, Page 5



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- **Fasteners for Roof Underlayment.** IRC 2012 R905.2.7.2 requires underlayment nail fasteners in areas subject to wind speeds equal to or exceeding 120 MPH to have minimum shank diameters of 0.105 inches (approximately equal to a 12 GA nail).<sup>7</sup> CTLGroup observed that typical shank diameters of fasteners visible in the attic space for the underlayment measured 0.084 inches, consistent with 14 GA nails (i.e., one size smaller than 12 GA). Thus, underlayment fastener sizes do not meet the code-prescribed minimum.
- **Fasteners for Vinyl Siding.** IRC 2012 R703.4 requires vinyl siding to be fastened with 16-gage (GA) staples. The American Society for Testing and Materials standard for fastener sizes<sup>8</sup> indicates the nominal "leg width" of a 16 GA staple is 0.064 inches, and the nominal "leg width" of an 18 GA staple is 0.050 inches. However, staple leg widths measured at Hidden Lakes fell between 0.0445 and 0.0520 inches, consistent with 18 GA staples (i.e., one size smaller than 16 GA). Thus, siding fastener sizes do not meet the code prescribed minimum. Furthermore, IRC 2012 R703.4 requires staple fasteners used to attach vinyl siding to be installed "*wide enough in the crown to allow free movement*". However, many staple fasteners were overdriven, and movement of the siding planks was not free. Thus, vinyl siding fastener installation does not satisfy code requirements for movement.
- **Bracing of Gable End Walls.** Baldwin County's supplemental code for bracing of gable end walls includes specific prescriptive details, including a 2x6 strongback at gable mid-height, and a diagonal brace fastened to the gable framing studs with four 10d nails. However, CTLGroup observed that many brace systems did not conform to Baldwin County's supplemental requirements. In particular, the strongback was typically either absent or undersized, braces were not attached to the gable end studs as described in the supplemental code, and the brace connections were fastened inadequately using an insufficient number of toenailed<sup>9</sup> fasteners.

Results of findings from CTLGroup's inspections plus review of photos furnished by Team Complete – a total of 71 houses in 19 developments – are presented in Table 1. Of the 71 houses inspected, nine (all in Hidden Lakes) were inspected by CTLGroup alone, eight were inspected by Team Complete with CTLGroup present, and 54 were inspected by Team Complete alone. In the case of inspections conducted by Team Complete, CTLGroup developed its findings based upon review of inspection photos furnished by Team Complete. Table A, attached as an appendix to this letter, provides references to specific inspection photographs documenting construction which was not in accordance with applicable requirements.

<sup>7</sup> 12 GA nails have listed shank diameters of 0.109 inches  
(Ref: <https://www.thomasnet.com/articles/hardware/screw-nail-sizes/>)

<sup>8</sup> ASTM F1667-18

<sup>9</sup> In general, toenailed connections are weaker than face nailed connections.



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Specific inspection results related to the four above-mentioned categories of findings may be summarized as follows:

**Window Performance Ratings** – as shown in Table 1, a total of **57** homes were identified with at least one instance where the window performance rating, as depicted on the label, did not comply with an applicable requirement. In none of the 71 homes inspected was a window performance label depicting the required *impact* rating documented.

**Fasteners for Roof Underlayment** – as shown in Table 1, a total of **14** homes were identified with at least one instance where the roof underlayment fasteners did not comply with an applicable requirement.

**Fasteners for Vinyl Siding** – as shown in Table 1, a total of **23** homes were identified with at least one instance where the vinyl siding fasteners did not comply with an applicable requirement. In none of the 36 vinyl-siding-clad homes inspected was a code-compliant vinyl siding fastener documented.

**Gable End Wall Bracing** – as shown in Table 1, a total of **59** homes were identified with at least one instance where the gable end wall bracing did not comply with applicable requirements. In none of the 71 homes inspected was code-compliant gable end wall bracing documented.

It should be noted that the above-listed numbers represent the lower bound of the number of non-compliances in the inspected structures. We have counted only those homes where an inspection photograph *clearly* depicts the presence of a particular type of non-compliance (i.e., photographs or measurements that do not conclusively demonstrate non-compliance have been excluded). Additional investigations may reveal additional instances of non-compliant construction.

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Table 1: Summary of inspection findings in terms of houses with at least one instance of a particular non-compliance

Development Name	Houses Inspected	Number of Houses with Particular Non-Compliances			
		Window Performance Ratings <sup>a</sup>	Fasteners for Roof Underlayment <sup>b</sup>	Fasteners for Vinyl Siding <sup>c</sup>	Gable End Wall Bracing <sup>d</sup>
Hidden Lakes	25	20	8	14	19
Aventura	3	2	0	0	1
Bellaton	2	1	1	0	2
Blackstone Lakes	1	1	0	0	0
Canaan Place	1	1	0	0	1
Churchill	2	2	0	0	2
Diamante	1	1	0	0	1
Fairhope Falls	6	5	0	0	6
Firethorne	3	3	1	0	1
Greenbrier	1	1	1	0	1
Harvest Meadows	11	10	1	9	11
Island Woods	2	1	0	0	2
Jubilee Farms	2	2	1	0	2
Old Field	3	2	0	0	1
The Reserve at Daphne	1	1	1	0	1
Stonebridge	4	1	0	0	4
Valamour	1	1	0	0	1
Villas at St. Charles	1	1	0	0	1
Winged Foot	1	1	0	0	1
<b>TOTALS:</b>	<b>71</b>	<b>57</b>	<b>14</b>	<b>23</b>	<b>59</b>

Notes for Table 1:

- <sup>a</sup> i.e., houses in which at least one instance of a window label without the required impact rating statement was documented
- <sup>b</sup> i.e., houses in which at least one instance of an undersized roof cladding fastener was documented
- <sup>c</sup> Of the 71 houses inspected, 36 had vinyl siding (others had brick veneer or other cladding). Of the 36 houses with vinyl siding, 23 were documented to have at least one instance of a non-compliant fastener.
- <sup>d</sup> i.e. houses with gabled roofs in which at least one instance of a non-compliant gable end brace was documented.



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We have endeavored to accurately and thoroughly present each area of concern identified during our site observations in accordance with current standards of professional practice. We reserve the right to modify this report and its findings based on additional information as it becomes available.

We sincerely appreciate the opportunity to be of service and look forward to assisting you further in this matter.

Respectfully submitted,



Sean Fields  
Associate  
[SFields@CTLGroup.com](mailto:SFields@CTLGroup.com)



David E. Kosnik, Ph.D., P.E. (AL Lic. No. 39547)  
Senior Engineer  
[DKosnik@CTLGroup.com](mailto:DKosnik@CTLGroup.com)



Richard T. Kaczowski  
Vice President  
[RKaczowski@CTLGroup.com](mailto:RKaczowski@CTLGroup.com)  
Phone: 847-972-3346

Appendix:

Table A: Summary of Photo Documentation of Specific Non-Compliant Construction



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Hidden Lakes and Other Subdivisions Investigation  
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APPENDIX

Table A: Summary of Photo Documentation of Specific Non-Compliant Construction

The following table summarizes photo-documentation of specific non-compliant construction observed at the houses inspected by CTLGroup and/or Team Complete.

The alphanumeric identifiers present in each of the four columns (Window Performance Ratings, Fasteners for Roof Underlayment, Fasteners for Vinyl Siding, Gable End Wall Bracing) correspond to latter portion of image file names pertaining to the respective construction detail at a particular residence. Digital images in the project file are organized by the firm which took the photo (CTLGroup or Team Complete), subdivision, and street address of the subject house within that subdivision.

For example, the "Fasteners for Vinyl Siding" column in the third row of Table A (Hidden Lakes / 17081 Lanier Blvd) shows 9208; 9223;. These identifiers point to the image files IMG\_9208.JPG and IMG\_9223.JPG, which document the size of selected fasteners for vinyl siding at that property.

In the case of inspections conducted by Team Complete with CTLGroup present, the CTLGroup photos identifiers are prepended with SF (for Sean Fields).



CTLGroup Project 000108 Table A: Summary of Photo Documentation of Specific Non-Compliant Construction September 17, 2021

<u>Subdivision</u>	<u>Address</u>	<u>Window Performance Ratings</u>	<u>Fasteners for Roof Underlayment</u>	<u>Fasteners for Vinyl Siding</u>	<u>Gable End Wall Bracing</u>
Hidden Lakes	17071 Lanier	SF8721;		SI7044;	SF8281; SF8289;
Hidden Lakes	17081 Lanier Blvd	9138; 9140; RD12;	1908;	9208; 9223;	9166;
Hidden Lakes	17316 Lewis Smith Dr	2221; 2223;	2233;		
Hidden Lakes	17426 Lewis Smith	7014; 7018;			7017; 7018;
Hidden Lakes	17449 Harding	3455;			3503;
Hidden Lakes	17695 Lewis Smith				SF8410;
Hidden Lakes	17729 Lewis Smith	SF8317; SF8352-8354;			6930; 6937
Hidden Lakes	17843 Lewis Smith Dr	2262;	2267;	2273;	RD4;
Hidden Lakes	17848 Lewis Smith			7086;	
Hidden Lakes	17862 Lewis Smith				
Hidden Lakes	17964 Lewis Smith Dr	2058; 2070;	2031; 2035;		9477;
Hidden Lakes	17965 Lewis Smith Dr	1995;			9418;
Hidden Lakes	17975 Lewis Smith Dr	1938; 1966; RD13;		9311;	9256;
Hidden Lakes	17998 Lewis Smith	0006; 9993;		0094;	0036; 0048;
Hidden Lakes	18039 Lewis Smith				
Hidden Lakes	18049 Lewis Smith	0217; 0224;		0167;	0278; 0299;
Hidden Lakes	18057 Lewis Smith				
Hidden Lakes	18065 Lewis Smith Dr	SF2285; 3354; 3371;	SF2294; PTJT3416; 3418;	SF2303; PTJT3334;	3397; 3400; 3407;
Hidden Lakes	18075 Lewis Smith Dr	2160; 2162; 2164;	2171;	9569;	9544; 9577;
Hidden Lakes	18081 Lewis Smith Dr	RD1;		SI7061; 9392;	9353; 9375;
Hidden Lakes	18357 Lewis Smith	3565; 3596;	3625;	3533;	3618-3622;
Hidden Lakes	7932 Pickwick	3285;	3321;	3246;	3306-3310;
Hidden Lakes	8053 Pickwick	PJT5654;			
Hidden Lakes	8065 Pickwick	0380;		0341;	SF8557-8562;
Hidden Lakes	8073 Pickwick	9901; 9928;		9866;	9950; 9973;
Aventura	408 Pogue St				9520;
Aventura	440 Pogue St	SF8460;			
Aventura	443 Pogue St	7240;			7202-7207; SF8545;



CTLGroup Project 000108 Table A: Summary of Photo Documentation of Specific Non-Compliant Construction September 17, 2021

<u>Subdivision</u>	<u>Address</u>	<u>Window Performance Ratings</u>	<u>Fasteners for Roof Underlayment</u>	<u>Fasteners for Vinyl Siding</u>	<u>Gable End Wall Bracing</u>
Bellaton	9723 Bellaton Ave				9682;
Bellaton	24378 Chantilly Ln	9410; 9427;	9371;		9347;
Blackstone Lakes	9311 Swan Point Rd	3602;			
Canaan Place	11800 Alabaster Dr	0421;			0565; 0574;
Churchill	11680 Alameda Ct	7493;			7435;
Churchill	31940 Calder Ct	8300;			8246; 8250; 8260;
Diamante	9456 Amethyst Dr	8656;			8565; 8593;
Fairhope Falls	13047 Hatchett Creek Ave	0745;			0780; 0781;
Fairhope Falls	21624 Gullfoss St				5649;
Fairhope Falls	21638 Gullfoss St	0009;			0036-0042;
Fairhope Falls	21880 Yosemite Blvd	0737; 0746; 0749;			0787; 0788;
Fairhope Falls	21902 Yosemite Blvd	7954; 7966;			7925;
Fairhope Falls	21916 Yosemite Blvd	0531; 0604;			0627; 0628; SF8583;
Firethorne	332 Nandina Loop	0068; 0079;	0194;		
Firethorne	336 Nandina Loop	9885; 9902			
Firethorne	339 Nandina Loop	8443; 8465;			8376-8380; 8386;
Greenbrier	753 Winesap Dr	5629;	5619;		5600; 5601; 5604;
Harvest Meadows	16620 Walstan Dr	7668;		7591;	7612; 7623;
Harvest Meadows	16704 Walstan Dr	1030; 1056;		1020;	1079;
Harvest Meadows	24082 Harvester Dr	0862; 0903;			0944-0954;
Harvest Meadows	24147 Harvester Dr	7764; 7768;		7695;	7728-7731; 7737
Harvest Meadows	24203 Harvester Dr	7577;			7553;
Harvest Meadows	24222 Harvester Dr	1150;	1239;	1059;	1203; 1223;
Harvest Meadows	24276 Harvester Dr	7872;		7792;	7818; 7819;
Harvest Meadows	24286 Harvester Dr	0932; 0961;		0866;	0977-0979; 0981; 0984;
Harvest Meadows	24314 Harvester Dr			7520;	7542-7544;
Harvest Meadows	24342 Harvester Dr	1485; 1531;		1431;	1575; 1590;
Harvest Meadows	24365 Harvester Dr	1322; 1325		1284;	1380; 1383;



<u>Subdivision</u>	<u>Address</u>	<u>Window Performance Ratings</u>	<u>Fasteners for Roof Underlayment</u>	<u>Fasteners for Vinyl Siding</u>	<u>Gable End Wall Bracing</u>
Island Woods	1916 Hogan Dr	5801;			5830;
Island Woods	1932 Lopez Ct				5862; 5865;
Jubilee Farms	24644 Spectacular Loop	9546; 9552;	9625;		9640; 9643; 9645;
Jubilee Farms	24874 Smarty Jones Ct	8136;			8058; 8067-8075; 8087;
Old Field	10184 Dunleith Loop	3635;			
Old Field	23976 Songbird Dr	5489;			5450; 5465; 5468; 5472;
Old Field	9604 Camberwell Dr				
Reserve at Daphne	11721 Agora Dr	9716;	9841;		9818;
Stonebridge	12820 Warbler	8941;			9015; 9031;
Stonebridge	13157 Sanderling				8758;
Stonebridge	31237 Palladian Way				5912;
Stonebridge	31601 Memphis Loop				9159; 9160;
Valamour	27146 E Avian Dr	9199;			5516; 5519;
Villas at St. Charles	25805 Pollard Rd Unit 11	0098;			0166;
Winged Foot	8048 Irwin Loop	7306; 7326;			7348-7352; 7357;





October 13, 2021

via email to: [david@shellerlawfirm.com](mailto:david@shellerlawfirm.com)

Mr. David L. Sheller  
The Sheller Law Firm, P.L.L.C.  
360 FM 1959  
Houston, Texas 77034

**Re: Foundation Investigation and Hidden Lakes and Related Developments  
CTLGroup Project No. 000108**

Dear Mr. Sheller:

This summary letter outlines CTLGroup's continued investigation of foundation conditions at certain D. R. Horton home developments in Baldwin and Mobile Counties, Alabama. Work performed to date includes investigation of finished construction conditions at homes in the Hidden Lakes at Bon Secour subdivision (hereafter "Hidden Lakes") in Baldwin County, and review of in-progress construction conditions at similar developments in Baldwin and Mobile Counties. All these developments were reported to be constructed by D. R. Horton, Inc. Our previous foundation investigation report was issued on March 18, 2021.

A summary of relevant code review is as follows.

- The Hidden Lakes subdivision is situated in Baldwin County, Alabama and is located outside the city limits of nearby Foley, Alabama; other under-construction D.R. Horton subdivisions inspected by CTLGroup are in Baldwin County or Mobile County.
- Baldwin County adopted the 2012 version of the International Code Council (ICC) group of model building codes on January 17, 2012. This code grouping includes the 2012 version of the International Residential Code (IRC).
- Baldwin County rescinded the 2012 versions of the ICC codes and adopted the 2018 versions effective May 21, 2019.<sup>1</sup>
- Per the Baldwin County government website, "The Baldwin County building permit jurisdiction includes all unincorporated areas of Baldwin County..."<sup>2</sup>
- Based upon publicly-available satellite imagery of Hidden Lakes, it appears that a set of homes on the east side of the Hidden Lakes development was constructed between approximately January 2015 and November 2017. A more recent group of homes on the west side appeared to have been constructed between November 2017 and January 2019 and were likely permitted between February and December 2018.

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<sup>1</sup> Resolution #2019-075 dated May 21, 2019

<sup>2</sup> <https://baldwincountyal.gov/departments/building-inspection>



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- Thus, the applicable building code in effect at the time of construction for homes in the west portion of Hidden Lakes was the 2012 IRC.
- Mobile County similarly adopted 2012 versions of the ICC codes in 2014 and adopted the 2018 versions of the ICC codes in 2019<sup>3</sup>.
- The most recent edition of the IBHS GOLD FORTIFIED HOME™ (IBHS) standard for hurricanes, high wind, and hail was published in 2020, and the IBHS standards for FORTIFIED HOME™ Hurricane Resistance were published in 2012 with supplemental technical bulletins issued up until March 2018. Therefore, based on the information obtained to date by CTLGroup, the applicable IBHS standard at the time of housing construction at Hidden Lakes was the 2012 version (with supplements).
- CTLGroup understands that homes at Hidden Lakes were represented as meeting the IBHS Gold Certification, the highest level of wind resistance (i.e. above the Bronze and Silver designations), characterized by certain prescriptive construction details that, when satisfied, offered increased structure and component survivability during wind events.
- CTLGroup obtained partial drawing sets for five D.R. Horton subdivisions: Hidden Lakes, Kensington Place, Jubilee Farms – The Meadows, Turnberry Crossing, and Chaparral.
- Construction drawings for the five above-mentioned D.R. Horton residential subdivisions prescribe garage and interior slab thicknesses of four inches with welded wire fabric (WWF) reinforcing placed graphically at mid-depth for interior and garage floor slabs. Both the 2012 and 2018 versions of the IRC prescribe minimum concrete slab-on-ground thicknesses of 3-1/2 inches.<sup>4</sup>
- Construction drawing general notes for D.R. Horton subdivisions at Kensington Place and Turnberry Crossing require compliance with construction standards including those published by the American Concrete Institute (ACI) and the Concrete Reinforcing Steel Institute (CRSI).
- The 2018 IRC references the 2014 editions of *Building Code Requirements for Structural Concrete* (ACI 318-14) and *Residential Code Requirements for Structural Concrete* (ACI 332-14), both published by the American Concrete Institute.
- ACI 318-14 Article 26.6.2.2(a) requires that embedded reinforcement be adequately supported before concrete placement.<sup>5</sup> Section R506 of the 2018 IRC requires that slabs be constructed in conformance with ACI 332, and requires that WWF be placed between the center to upper one third of the slab for concrete floors on ground.<sup>6</sup>
- ACI 117-10 Article 4.5.4 allows slab thickness to be reduced by up to 3/8 inch (average over multiple samples) or 3/4 inch (at a single location).

<sup>3</sup> <https://www.mobilecountyal.gov/government/departments/inspection-services/adopted-codes/>

<sup>4</sup> 2018 IRC §R506.1 and Figure R403.1(1). 2012 IRC Figure R403.1(1)

<sup>5</sup> ACI 332-14 Article 10.6.1 provides a similar requirement for supporting reinforcement.

<sup>6</sup> IRC 2018 R506.2.4



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CTLGroup performed non-destructive testing (NDT) at 11 residences at Hidden Lakes and extracted concrete core samples at three of these homes. Ground penetrating radar (GPR) scans were performed to evaluate welded wire fabric reinforcing placement in slabs and anchor bolt cover at exposed slab edges. Ultrasonic pulse echo velocity (UPV) testing was performed in garage areas to evaluate slab thickness. The test methods were calibrated using cores taken from three garage slabs. Based on our work to date CTLGroup has developed the following findings related to foundation conditions at Hidden Lakes:

- Previous foundation observations<sup>7</sup> at other D.R. Horton developments confirm that foundations normally consist of monolithic slabs with integral thickened footings. Observations indicated that WWF was improperly installed in contact with the base layer (Figure 1 and CTLGroup report dated March 18, 2021).
- In-progress foundation construction at the Turnberry Crossing D. R. Horton development indicated widespread base layer surface elevation variations, as documented in CTLGroup's March 18, 2021 report. This variation is not consistent with expected and necessary compaction and leveling work<sup>8</sup> and does not satisfy recognized industry standards or tolerances for construction.
- In-progress and complete foundation construction at multiple D.R. Horton developments, including Hidden Lakes, exhibited improper post-installed sill plate anchor repairs (Figures 2 and 3). The anchors appeared to have been drilled and installed at an angle from the interior spaces resulting in low cover on the exterior slab surface. In addition, some post-installed anchors had ruptured the concrete surface and were corroded.
- A substantive foundation crack measuring approximately 1/8 inch wide was visible under carpeting at one Hidden Lakes residence (Figures 4 and 5). The crack exhibited separation consistent with the absence of WWF reinforcement and early age formation; crack edges appear rounded and were impacted with construction material.
- CTLGroup's GPR scans (Figures 6 - 8) and concrete core samples confirmed that WWF was improperly installed; mesh was consistently found at the bottom of the concrete slab. Mesh away from chair supports was located near the slab bottom. This improper installation is likely attributable to insufficient mesh stiffness and insufficient bar support.
- Measured garage slab and core thicknesses at Hidden Lakes were highly variable, ranging between approximately 3-3/8 and 8 inches, consistent with CTLGroup's observations of improperly graded and compacted base materials at in-progress construction sites.

Based on our observations to date, and in particular, the similar and consistent foundation defects visible at Hidden Lakes, Greystone Village, Kensington Place, Old Field, The Village at Hickory Street, and Turnberry Crossing, it is likely that foundations at other D.R. Horton developments in the area – including Aventura, Blackstone Lakes, Chaparral, Chapel Creek, Jubilee Farms, Magnolia Springs, Winged Foot, and the Woodlands at Saraland – have similar defective construction details.

<sup>7</sup> Turnberry Crossing, Baldwin County, Alabama - CTLGroup report dated March 18, 2021

<sup>8</sup> ACI 332-14 Article 10.2 requires fill be "compacted to provide uniform support of the slab."



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## Findings and Recommendations

1. Failure to properly position and support the WWF is not in conformance with the construction specifications or recommended industry standards. This construction defect would be expected to diminish the durability and service life of the foundation and degrade the reinforcement's ability to control concrete floor cracks that may result from shrinkage or expected settlement effects. In particular, the slab's ability to control crack widths, maintain aggregate interlock, resist external loads, span over irregular subgrade materials, and provide post-cracking moment capacity will be diminished. A relatively wide foundation crack was already formed at one Hidden Lakes residence and similar cracks would be expected to form over time or may have already formed at a number of similarly constructed D.R. Horton residential developments.

Thus, the likelihood of foundation crack formation is elevated, and inspection of concealed floor surfaces under floor finishes is recommended to further characterize foundation conditions. Depending on the location and severity of foundation cracks, conceptual repairs could include monitoring, underpinning, crack injection, or local reconstruction as appropriate.

CTLGroup recommends that the following repair be performed on all currently known foundation cracks and future cracks that may develop:

- Any framing, finish, or other materials shall be removed to expose the crack along its entire length.
- The crack shall be routed, cleaned, and sealed in accordance with ACI 546R-14<sup>9</sup> and good installation practices.

Note that the development of extensive cracks at a single home, or cracks that exhibit significant offsets indicative of settlement or movement, may require a more comprehensive repair. Repair options for such cases include re-supporting the foundation through underpinning or other means, or removal and reconstruction of a portion of the foundation. More comprehensive repair designs would need to be engineered on a case-specific basis.

2. Failure to maintain consistent slab thickness is not in conformance with the construction specifications or recommended industry standards. This construction defect suggests improper base layer compaction that would be expected to contribute to foundation settlement and crack development over time.

The combined effects of improper slab thickness control, improper WWF fabric installation, the apparent lack of base material compaction, and poor base material elevation control would be expected to increase the likelihood of foundation crack development and displacement. CTLGroup recommends periodic inspections of D. R. Horton Development residences by a qualified person. Inspections may include visual inspection of foundations, floors, finishes, and veneers for indications of structural displacement.

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<sup>9</sup> *Guide to Concrete Repair* ACI 546R-14, Article 4.3.1



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3. Some sill plate anchor repairs are not in conformance with industry or IBHS Gold Standards, violate concrete cover requirements, and, as installed would be expected to diminish the design wind-resistivity of the structure. In addition, some exposed repair anchors already exhibit signs of corrosion damage and would not be expected to fulfill their expected service life.

Improperly installed foundation anchors, and in particular, post-installed repair anchors should be repaired. The 2012 IRC Section R403.1.6 contains the following requirements for anchoring wood sole plates of braced wall panels:

- Anchor bolts shall be at least 1/2 inch in diameter.
- Anchor bolts shall extend a minimum of 7 inches into concrete.
- Anchor bolts shall be spaced a maximum of 6 feet on center.
- There shall be a minimum of two bolts per plate section with one bolt located not more than 12 inches or less than seven bolt diameters from each end of the plate section.

CTLGroup recommends that the following repair be performed on all known locations of damaged anchors or anchors that are not in compliance with the above code requirements, or damaged/non-compliant anchors which may be discovered in the future:

- Any framing, finish, or other materials shall be removed to expose the anchor and sill plate as needed.
- Improperly installed foundation anchors with low cover and damaged concrete shall be removed and replaced with anchors that satisfy the design strength requirements.
- Any voids, existing or created during the removal process, shall be patched.
- New post-installed anchors shall be installed into undamaged concrete. Sufficient clearance should be created to allow anchor holes to be drilled plumb and to the specified embedment depth.
- Holes shall be cleaned and prepared in accordance with anchor manufacturer's recommendations.

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We have endeavored to accurately and thoroughly present each area of concern identified during our site observations in accordance with current standards of professional practice. We reserve the right to modify this report and its opinions based on additional information as it becomes available.

We sincerely appreciate the opportunity to be of service and look forward to assisting you in this matter.

Respectfully submitted,



Sean Fields  
Associate  
[SFields@CTLGroup.com](mailto:SFields@CTLGroup.com)



David E. Kosnik, Ph.D., P.E. (AL Lic. No. 39547)  
Senior Engineer  
[DKosnik@CTLGroup.com](mailto:DKosnik@CTLGroup.com)



Richard T. Kaczowski  
Vice President  
[RKaczowski@CTLGroup.com](mailto:RKaczowski@CTLGroup.com)  
Phone: 847-972-3346

DOCUMENT 18



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Foundation Investigation at Hidden Lakes and Related Developments  
CTLGroup Project No.000108

October 13, 2021  
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Figure 1: Typical base layer condition



Figure 2: Rupture at corroded foundation anchor



Figure 3: Previous improper repair of improperly installed foundation anchor

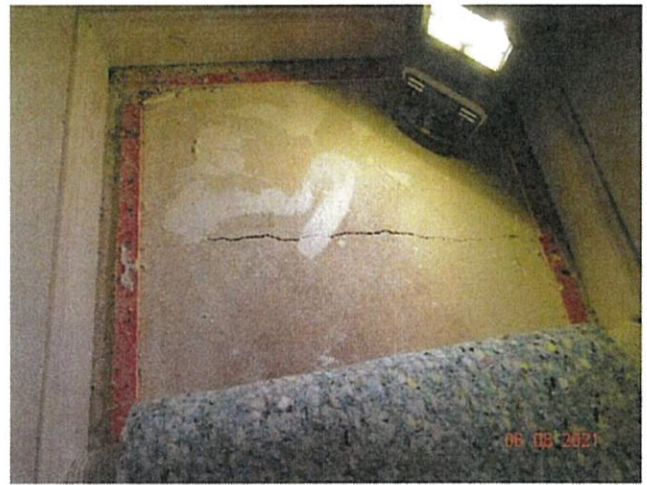


Figure 4: Foundation crack

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Figure 5: Foundation crack detail

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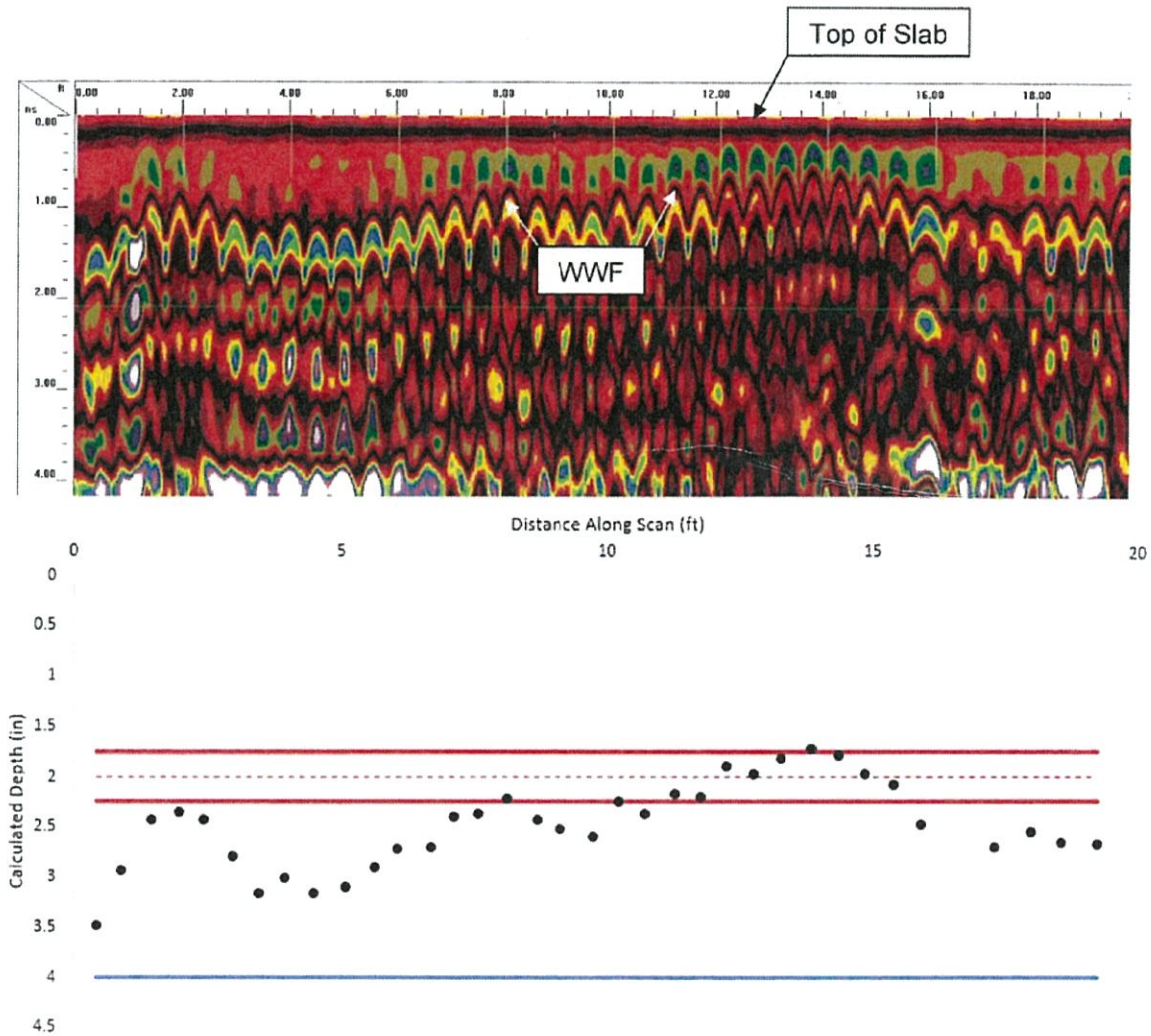


Figure 6: Raw data (top) and processed typical WWF reinforcement placement (below). Solid blue line indicates design slab thickness. Red lines indicate design WWF location (dashed) and typical placement tolerances (solid). Black points indicate calculated depth points of WWF. Scan of 8043 Pickwick Drive garage slab.



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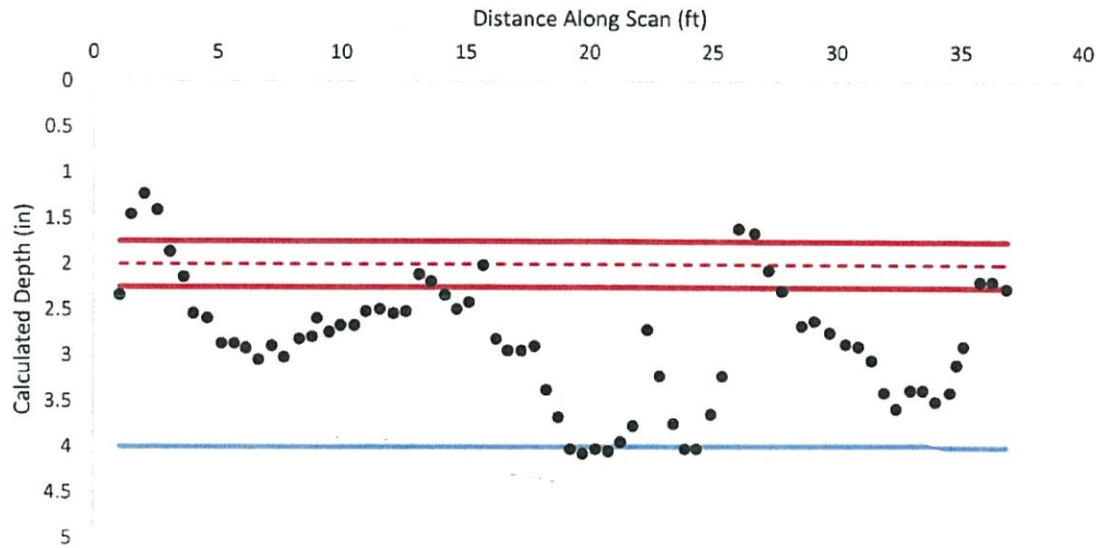


Figure 7: Similar processed scan data. Scan of 8043 Pickwick Drive interior slab.

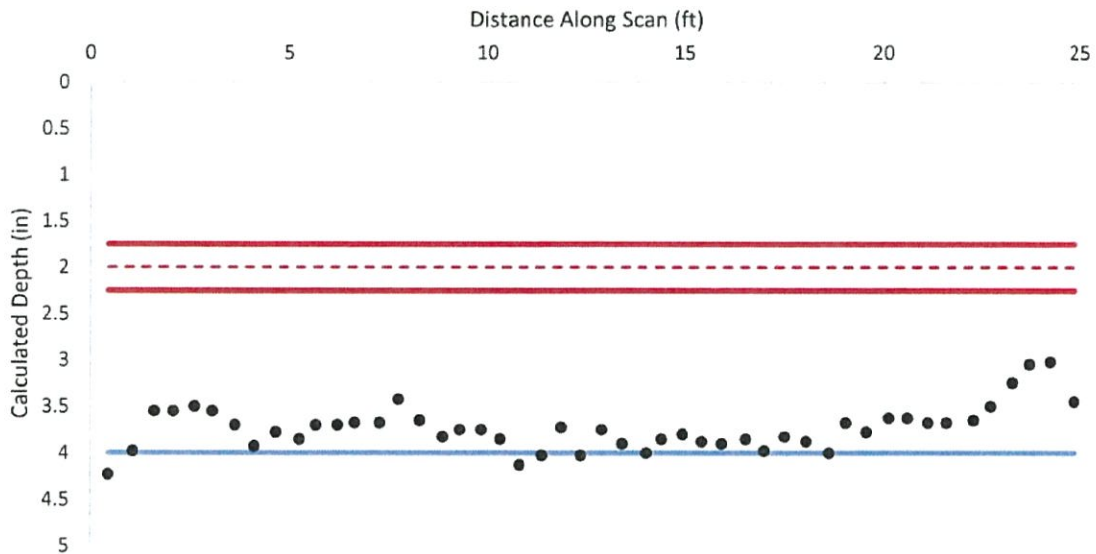


Figure 8: Similar processed scan data. Scan of 18049 Lewis Smith Drive interior slab.

DOCUMENT 18



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330 W. Government Street  
Pensacola, Florida 32502

P. O. Box 1496  
Gulf Breeze, FL 32562

### AFFIDAVIT

My name is John G. Minor, I am over the age of 18 years of age. I am fully competent to make this Affidavit. I have personal knowledge of the facts stated herein and I know them to be true and correct. Thank you for the opportunity to present my position regarding the properties referenced below built by DR Horton and their subcontractors in the following subdivisions:

#### Reference: Construction Defect/Builder Liability Claims



#### Subdivisions:

*Aventura : Gulf Shores, AL*  
*Blackstone Lakes : Daphne, AL*  
*Churchill : Spanish Fort, AL*  
*Diamante : Daphne, AL*  
*Fairhope Falls : Fairhope, AL*  
*Greenbrier : Fairhope, AL*  
*Harvest Meadows : Loxley, AL*  
*Hidden Lakes : Foley, AL*  
*Jubilee Farms : Daphne, AL*  
*Porches: Elberta, AL*  
*Stonebridge : Spanish Fort, AL*  
*Valamour : Loxley, AL*  
*Waterside Resort : Gulf Shores, AL*  
*Woodlawn : Fairhope, AL*

*Bellaton : Daphne, AL*  
*Canaan Place : Daphne, AL*  
*Cypress Village : Gulf Shores, AL*  
*Ethos : Foley, AL*  
*Firethorne : Fairhope, AL*  
*Greystone Village : Foley, AL*  
*Hickory Bend : Foley, AL*  
*Island Woods : Gulf Shores, AL*  
*Old Field : Daphne, AL*  
*Shady Fields Estates : Summerdale, AL*  
*The Reserve at Daphne : Daphne, AL*  
*Villas at St. Charles : Daphne, AL*  
*Winged Foot : Daphne, AL*  
*Woodmont : Foley, AL*

I am President of Complete, Inc., a building consulting organization specializing in water intrusion, construction defect diagnostics and scope of repair estimating. We work in communities similar to those listed above and have performed professional services in the inspection process of thousands of homes over two and half decades. Our professional staff is very knowledgeable of the guidelines of the International Residential Code (IRC) and the IIBHS Fortified Home program.

We know from our experiences, that the building code must be adhered to for the safety, welfare, and future of the communities we serve. Failure to build based on the building code guidelines invites financial difficulties into these homes that fill a role both as starter homes for those entering home ownership and for those on fixed incomes later in life. Neither are in the position to spend thousands of dollars to attempt to get a home that will not leak, crack, settle or otherwise fail to provide a safe environment. These issues can grow to become unmanageable for a young family and many times can lead to local economic blight, especially if the real estate market hesitates for any reason. Allowing these conditions described here within will cause imminent harm to the property owners, neighbors, community, and cities within Baldwin County.



In addition to the IRC, many residents were led to believe that these properties fully qualified as Gold Standard Fortified homes. Our inspection has proven that clearly is not the case. One of the emphases learned from the IIBHS testing at their South Carolina facility is the need for consistency and the responsibility to fulfill all the requirements of the system to expect the benefit.

The challenges regarding these properties will require extensive repair including, but not limited to, roof replacement, window and siding replacement, slab repairs and/or interior repairs. These repairs will affect the quality of life in these neighborhoods for the families living in the homes as large equipment and construction practices will be used in a residential setting. The costs and effects of not completing the necessary repairs will be even higher due to water damage and mold growing in the homes; the conditions will become worse over time. We have calculated the values for the repairs using Xactimate software that is directly associated with the date and location of the subject properties.

We worked with multiple additional experts in coming to our conclusions on this review. Please find their reports as attached (Exhibits B and C):

- Window Testing Report from Intertek dated February 8<sup>th</sup>, 2021 state that the windows are not installed to either Gold Certified or IRC Standards.
- Engineering Report conducted by CTL Group dated February 28<sup>th</sup>, 2020, state their findings regarding the Roof, Windows, Foundation and Siding are not in compliance of the Gold Standard or IRC Standards.

#### **Referenced Codes:**

- Baldwin County adopted the 2012 International Residential Code (IRC) effective January 17, 2012
- Baldwin County rescinded the 2012 International Residential Code (IRC) and adopted the 2018 International Residential Code (IRC) effective May 21, 2019
- Baldwin County issued a Supplemental Code in addition to the 2012 International Residential Code (IRC) that includes certain structural requirements:
  - IRC R905.2.7.2 requires underlayment nail fasteners in areas subject to wind speeds equal to or exceeding 120 MPH to have minimum shank diameters of 0.105 inches (approximately equal to a 12-gauge nail).
  - R703.4 requires vinyl siding to be fastened with 16-gauge staples.
  - IRC R612.3 and R612.6 require labeling to identify the certification agencies, pressure and impact performance characteristics, and manufacturer.
- 2018 Residential Building Code : Baldwin County Supplemental Code
  - Baldwin County's supplemental code for bracing of gable end walls includes specific prescriptive details, including a 2x6 strongback at gable mid-height, and a diagonal brace fastened to the gable framing studs with four 10d nails.
    - 2020 RBC Supplement removed this requirement.
- IBHS Gold Fortified Home Standards for Hurricanes



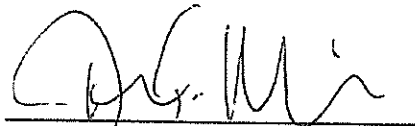
I am a licensed Certified General Contractor in state of the Florida, where my company resides, and I work as an Expert Witness with experience in cost estimating and construction practices in the state of Alabama. I am also licensed as a General Contractor in the state of North Carolina and South Carolina, a Certified Flood Plain Manager and Insurance Appraiser.

Complete Inc. employees and I have inspected over 100 homes, all of which have similar major defects along with additional Plumbing, HVAC, and drainage issues on a case-by-case basis.

Having served as a Trial Expert in County and State court, I am prepared to testify, if called, to answer questions regarding the information related to the construction of the residential homes evaluated in the subdivisions referenced on Page -1- of this document.

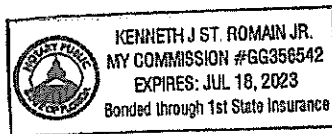
Accompanying the Affidavit and referenced as Exhibit A, is my professional Curriculum Vitae.

Respectfully Submitted,



John G. Minor  
850-377-5423

Subscribed and sworn before me this 23<sup>rd</sup> day of November 2021.



Notary Public

Enclosure : Exhibit A : John G. Minor Curriculum Vitae

Exhibit B : Intertek Report

Exhibit C : CTL Group Report



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Intertek- ATI  
5101 Unicon Drive  
Suite E  
Wake Forest, North Carolina  
27587

Tel +1 919-534-6742  
Brandon.Nix@intertek.com  
intertek.com

November 19, 2021

Affidavit of Brandon Nix, FMPC – Field Testing Manager of the Southeast Region

Re: D.R Horton Homes in Baldwin County, Alabama

Dear Mr. Sheller:

My name is Brandon Nix and I am over 18 years old. I am competent to make this affidavit. I have personal knowledge of the facts stated within and they are true and correct based on my personal knowledge and professional opinions. I have been with Architectural Testing, an Intertek company, for approaching 5 years. After graduating from Auburn University with a Bachelors in Chemistry, I sought employment with Architectural Testing in the summer of 2017 as a Level 1 Technician. In less than three years time, I worked myself into the role of Field Testing Manager of the Southeast Region, managing three to five field testing teams who perform a myriad of building envelope performance tests in accordance with Fenestration and Glazing Industry Alliance (FGIA, formerly known as AAMA) and the American Society for Testing and Materials (ASTM) standards and procedures. In my management position, I oversee more than 1000 window related tests a year and act as the final signatory on all certified reports. I also hold the highest industry recognized professional certification for fenestration products, the Fenestration Masters Professional Certification (FMPC).

In February 2021, my field testing teams services were retained by the Sheller Law Firm to provide water penetration tests per ASTM E 1105, *Standard Test Method for Field Determination of Water Penetration of Installed Exterior Windows, Skylights, Doors, and Curtain Walls, by Uniform or Cyclic Static Air Pressure Difference*, at five separate single family homes in Foley, Alabama. It is our understanding that these single family homes were constructed by D.R. Horton and were represented as meeting the IBHS Gold Certification, the highest level of wind resistance, which as it pertains to window performance ratings, has applicable window rating requirements as well as impact resistance requirements. The windows that were selected for testing, were selected due to previous instances of water penetration through nominal wind-rain events. These windows, which can be referenced in Intertek B&C Report No. M0239.01-251-43-R0, were Ply gem 1500 series Integral Mulled twin single hung windows, with a NAMI Certification label of a Performance Grade LC50.

In order to achieve a Performance Grade, hence forth referred to as PG, of a 50, the window must be tested in accordance with AAMA/WDMA/CSA 101/I.S.2/A440 – 05, 08, 11, also referred to as the North American Fenestration Standard (NAFS). Under this test protocol, a fenestration must successfully pass an air infiltration test per ASTM E283, a water penetration test per ASTM E547, and a structural load test per ASTM E331. Successful testing per each of these standards at a particular test pressure, as defined in Table 5.1 (US Performance Grades) in the North American Fenestration Standard, yields a single rating as described by the Performance Grade.

The Performance Grade is limited by the lowest rated air, water, or structural test result. Therefore, a Performance Grade of PG50 would at the least indicate successful Air infiltration testing at 1.57psf, successful water penetration testing at 7.52psf and successful structural testing at +/- 50.00 psf. The 50.00 psf structural load is equivalent to 139.75 MPH windward and leeward wind. The 7.52psf water penetration load is equivalent to 54.19 MPH. The 1.57psf air infiltration load is an industry standard for residential products and is

All legal information here







equivalent to 25.08 MPH. The windows were tested at the full water penetration design pressure of 7.52psf (54.19mph) and performed as designed. The IBHS Gold Certification program advertises performance capable of resisting hurricane strength winds and rain and therefore prompted additional testing at 10.00psf (62.5mph) and 15.00psf (76.55mph) pressures. Those tests resulted in extreme water penetration, which was expected as the window's designed water penetration performance is less than those test pressures. As designed, these windows are not able to prevent water leakage beyond 54.19mph, the equivalent of a midlevel Tropical Storm. This indicates that under the category 3 hurricane strength winds and rain that the Gold Certification program protects against, significant water penetration will occur which can lead to imminent and irreparable water damage. Based upon my industry experience, water leakage in and around window openings will likely result in mold and mildew growth, usually requiring leakage remediation, mold abatement, and wall material replacement. Throughout my tenure, I have observed mold and mildew growth as a result of water on dozens of homes.

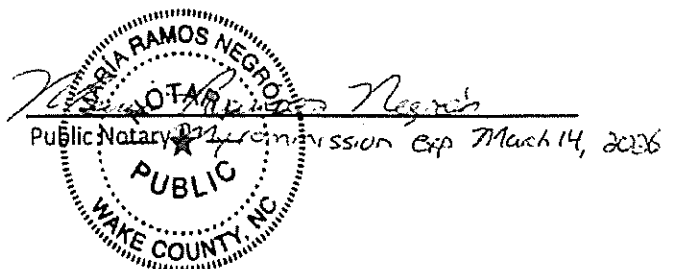
An additional requirement of the IBHS Gold Certification is for all fenestration products to be impact rated per AAMA. Impact ratings can be, though not required, identified on the product by additional labelling on the NAMI Certification Label or by hallmarks or etchings on the laminated glass layer. Regardless of labelling present on the specimen, impact ratings must be validated by certified test reports per AAMA 506 or ASTM E1996, *Standard Specification for Performance of Exterior Windows, Curtain Walls, Doors, and Impact Protective Systems Impacted by Windborne Debris in Hurricanes*. According to the performance data that the manufacturer (Ply Gem) has available, The Ply Gem 1500 series does include impact rated products, however there are no Ply Gem 1500 Series Integral Mull configurations, which were the ones tested, that include certification under AAMA 506. Therefore the lack in available documentation and observed details for impact ratings does not permit under reasonable certainty that these windows are impact rated, and should then be considered non-impact.

Following our initial visit to Baldwin County, I have received additional information and photos from Complete Incorporated, in over 100 homes that they inspected in approximately 19 subdivision throughout the county. It is my understanding that these homes are also represented as meeting the IBHS Gold Certification program. From all of the photos and descriptions presented to me, of which include but are not limited to additional PlyGem 1500 series, Krestmark 200 series and MI Windows 3540 series windows, none include documentation to support impact ratings per AAMA 506 and/or ASTM E1996, and therefore should also be considered as non-impact.

These opinions are offered with a reasonable degree of certainty in accordance with my Fenestration Master Professional Certification.

Before me the undersigned authority, Brandon Nix, personally appeared, 11-19-2021

Authorized Signatory  
Brandon Nix, FMPC  
Field Testing Manager – Southeast







## AlaFile E-Notice

05-CV-2021-901218.00

Judge: JODY W. BISHOP

To: JOSEPH THOMAS PILCHER  
tpilcher@wbbwlaw.com

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# NOTICE OF ELECTRONIC FILING

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IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA

MICHAEL MORTON ET AL V. D.R. HORTON, INC. - BIRMINGHAM ET AL  
05-CV-2021-901218.00

The following matter was FILED on 12/2/2021 7:59:20 AM

**C001 MORTON MICHAEL**  
**C002 MORTON LISA**  
**C003 SMITH JEREMY**  
**C004 SMITH LINDSEY**  
**C005 BLAUNER ROBERT**  
**C006 BLAUNER PAMELA**  
**C007 TOTH KIRK**  
**C008 ROBINSON HERBERT**  
**C009 ROBERSON AMANDA**  
**C010 SLATER LANCE COLE**  
**C011 WILLIAMS TROY**  
**C012 BAKER JOSH**  
**C013 STANLEY ROBERT**  
**C014 STANLEY DARBI**  
**C015 DOUGLAS SHELBY**  
**C016 BENDER JOHN**  
**C017 BENDER TENA**  
**C018 BEAL MATTHEW**  
**C019 BEAL CHEYENNE**  
**C020 PERRY CECIL**  
**C021 PERRY NANCY**  
**C022 DAVIS CHRISTOPHER**  
**C023 ROBERTS HANNIS**  
**C024 LAIRSON CARLIS**



C025 LAIRSON SHERI  
C026 KALIS JESS  
C027 KALIS KATHY  
C028 DIXON CHRISTI  
C029 MERRIWEATHER ANDREW RAY  
C030 MERRIWEATHER HEATHER  
C031 MCCANE GERI LYNN  
C032 MITCHELL EDWARD  
C033 HAMDAN SAGER J.  
C034 ASHTON ROY  
C035 ASHTON MICHELLE  
C036 GARRISON SEAN  
C037 CALLAGHAN PATRICK  
C038 CALLAGHAN LIZ  
C039 SUMRALL LAUREN  
C040 HOOTS NICHOLAS  
C041 HODSON DAN  
C042 WHITE JANET  
C043 DAVIS HEIDI  
C044 WEST NICHOLAS  
C045 HINOTE BRENDA LYNN  
C046 SETTLES ROY  
C047 COOLEY ADAM  
C048 VONTROBA MARK  
C049 SANDERS CHRISTOPHER LEE  
C050 BUTLER CHRIS  
C051 BUTLER CRYSTAL  
C052 MESSER GEORGE  
C053 MESSER KATHLEEN  
C054 PARNELL BRENT  
C055 PARNELL TAMMY  
C056 STEWART JAMES  
C057 FUNDERBURG JAMES  
C058 FUNDERBERG ARIEL HALEY  
C059 PERMANAND NADA BLAMACHAN  
C060 KENT TIM  
C061 KENT STACIE  
C062 GIER TIMOTHY  
C063 GIER MICHELLE  
C064 SULLIVAN RICK  
C065 SULLIVAN MELISSA  
C066 OWSLEY DANIEL  
C067 TAYLOR CHRISTOPHER  
C068 MATTISON SHARRON  
C069 HARRISON DAVID  
C070 HARRISON ROXANNE



**C071 WINCHESTER SARA**

**C072 OWENS TERRIE**

**C073 OWENS DAVID**

**C074 BOGL JOHN**

**C075 BOGL TIFFANY**

**C076 WIGER STEVE**

**C077 MADDOX JERRY**

**C078 NGUYGEN LOAN M.**

**C079 WHITE JAMES**

**C080 WHITE TARA**

**C081 WASHINGTON CARLTON**

**C082 MILES CODY**

**C083 REED VICTORIA MILES**

**C084 WHITE BENJAMIN**

**C085 BLAKE JACOB VAN**

**C086 HARPER RICHARD**

**C087 HINTZ CYNTHIA**

**C088 CAMPBELL TODD**

**SUPPLEMENT**

[Filer: PILCHER JOSEPH THOMAS IV]

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CIRCUIT COURT CLERK  
BALDWIN COUNTY, ALABAMA  
312 COURTHOUSE SQUARE  
SUITE 10  
BAY MINETTE, AL, 36507

251-937-9561  
jody.wise@alacourt.gov





## AlaFile E-Notice

05-CV-2021-901218.00

Judge: JODY W. BISHOP

To: D.R. HORTON, INC. - BIRMINGHAM (PRO SE)  
2 N. JACKSON STREET  
SUITE 605  
MONTGOMERY, AL, 36104-0000

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# NOTICE OF ELECTRONIC FILING

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IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA

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C018 BEAL MATTHEW  
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C042 WHITE JANET  
C043 DAVIS HEIDI  
C044 WEST NICHOLAS  
C045 HINOTE BRENDA LYNN  
C046 SETTLES ROY  
C047 COOLEY ADAM  
C048 VONTROBA MARK  
C049 SANDERS CHRISTOPHER LEE  
C050 BUTLER CHRIS  
C051 BUTLER CRYSTAL  
C052 MESSER GEORGE  
C053 MESSER KATHLEEN  
C054 PARNELL BRENT  
C055 PARNELL TAMMY  
C056 STEWART JAMES  
C057 FUNDERBURG JAMES  
C058 FUNDERBERG ARIEL HALEY  
C059 PERMANAND NADA BLAMACHAN  
C060 KENT TIM  
C061 KENT STACIE  
C062 GIER TIMOTHY  
C063 GIER MICHELLE  
C064 SULLIVAN RICK  
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C066 OWSLEY DANIEL  
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**C071 WINCHESTER SARA**

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**C087 HINTZ CYNTHIA**

**C088 CAMPBELL TODD**

**SUPPLEMENT**

**[Filer: PILCHER JOSEPH THOMAS IV]**

Notice Date: 12/2/2021 7:59:20 AM

JODY L. WISE  
CIRCUIT COURT CLERK  
BALDWIN COUNTY, ALABAMA  
312 COURTHOUSE SQUARE  
SUITE 10  
BAY MINETTE, AL, 36507

251-937-9561  
jody.wise@alacourt.gov





## AlaFile E-Notice

05-CV-2021-901218.00

Judge: JODY W. BISHOP

To: D.R. HORTON, INC. (PRO SE)  
301 COMMERCE STREET  
FORT WORTH, TX, 76102-0000

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# NOTICE OF ELECTRONIC FILING

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IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA

MICHAEL MORTON ET AL V. D.R. HORTON, INC. - BIRMINGHAM ET AL  
05-CV-2021-901218.00

The following matter was FILED on 12/2/2021 7:59:20 AM

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david@shellerlawfirm.com

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## AlaFile E-Notice

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Judge: JODY W. BISHOP

To: HAZELWOOD STEVEN DOUGLAS  
shazelwood@hazelwoodfirm.com

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BALDWIN COUNTY, ALABAMA  
JODY L. WISE, CLERK

V.

D.R. HORTON, INC. - BIRMINGHAM,  
D.R. HORTON, INC.,  
BETHEL ENGINEERING, INC.,  
Defendants.

Case No.: CV-2021-901218.00

## ORDER

MOTION FOR PRELIMINARY INJUNCTION filed by MORTON MICHAEL, MORTON LISA, SMITH JEREMY, SMITH LINDSEY, BLAUNER ROBERT, BLAUNER PAMELA, TOTH KIRK, ROBINSON HERBERT, ROBERSON AMANDA, SLATER LANCE COLE, WILLIAMS TROY, BAKER JOSH, STANLEY ROBERT, STANLEY DARBI, DOUGLAS SHELBY, BENDER JOHN BENDER TENA, BEAL MATTHEW, BEAL CHEYENNE, PERRY CECIL, PERRY NANCY, DAVIS CHRISTOPHER, ROBERTS HANNIS, LAIRSON CARLIS, LAIRSON SHERI, KALIS JESS, KALIS KATHY, DIXON CHRISTI, MERRIWEATHER ANDREW RAY, MERRIWEATHER HEATHER, MCCANE GERI LYNN, MITCHELL EDWARD, HAMDAN SAGER J., ASHTON ROY, ASHTON MICHELLE, GARRISON SEAN, CALLAGHAN PATRICK, CALLAGHAN LIZ, SUMRALL LAUREN, HOOTS NICHOLAS, HODSON DAN, WHITE JANET, DAVIS HEIDI, WEST NICHOLAS, HINOTE BRENDA LYNN, SETTLES ROY, COOLEY ADAM, VONTROBA MARK, SANDERS CHRISTOPHER LEE, BUTLER CHRIS, BUTLER CRYSTAL, MESSER GEORGE, MESSER KATHLEEN, PARNELL BRENT, PARNELL TAMMY, STEWART JAMES, FUNDERBURG JAMES, FUNDERBERG ARIEL HALEY, PERMANAND NADA BLAMACHAN, KENT TIM, KENT STACIE, GIER TIMOTHY, GIER MICHELLE, SULLIVAN RICK, SULLIVAN MELISSA, OWSLEY DANIEL, TAYLOR CHRISTOPHER, MATTISON SHARRON, HARRISON DAVID, HARRISON ROXANNE, WINCHESTER SARA, OWENS TERRIE, OWENS DAVID, BOGL JOHN, BOGL TIFFANY, WIGER STEVE, MADDOX JERRY, NGUYEN LOAN M., WHITE JAMES, WHITE TARA, WASHINGTON CARLTON, MILES CODY, REED VICTORIA MILES, WHITE BENJAMIN, BLAKE JACOB VAN, HARPER RICHARD, HINTZ CYNTHIA and CAMPBELL TODD is hereby PENDING. Opposing party is granted 14 days to file a response. Response shall be submitted as a supplement to the pending motion.

**DONE** this 3<sup>rd</sup> day of December, 2021.

/s/ JODY W. BISHOP  
CIRCUIT JUDGE





## AlaFile E-Notice

05-CV-2021-901218.00

Judge: JODY W. BISHOP

To: PILCHER JOSEPH THOMAS IV  
tpilcher@wbbwlaw.com

---

## NOTICE OF COURT ACTION

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IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA

MICHAEL MORTON ET AL V. D.R. HORTON, INC. - BIRMINGHAM ET AL  
05-CV-2021-901218.00

A court action was entered in the above case on 12/3/2021 12:31:41 PM

ORDER

[Filer: ]

Disposition: PENDING

Judge: JWB

Notice Date: 12/3/2021 12:31:41 PM

JODY L. WISE  
CIRCUIT COURT CLERK  
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Judge: JODY W. BISHOP

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Judge: JODY W. BISHOP

To: D.R. HORTON, INC. - BIRMINGHAM (PRO SE)  
2 N. JACKSON STREET  
SUITE 605  
MONTGOMERY, AL, 36104-0000

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Judge: JODY W. BISHOP

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JODY L. WISE, CLERK

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12/6/2021 8:26 AM  
05-CV-2021-901218.00  
CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA  
JODY L. WISE, CLERK

**IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA**

**MICHAEL MORTON, et. al.,**

**Plaintiffs,**

**JURY TRIAL DEMANDED**

**vs.**

**Case No. CV-2021-\_\_\_\_\_**

**D.R. HORTON, INC., D.R. HORTON-BIRMINGHAM, BETHEL ENGINEERING, A, B, C, D, E, and/or F being those persons, corporations, firms or entities who were the engineers, designers, developers, contractors, subcontractors, agents, entities or other persons whose conduct caused or contributed to the deceptive acts by the Defendant's for which have caused damages to the Plaintiffs, G, H, I, J, K, and/or L, being those persons, corporations, firms or other entities responsible for creating, causing and/or continuing to commit a nuisance, trespass, negligence, or wantonness causing damage to the Plaintiffs, the identities of said fictitious parties being unknown to the Plaintiffs at present or if known, the identities as proper parties cannot be ascertained at this time, but will be substituted by amendment upon learning their true identity, unless otherwise stated, the word, Defendant shall include all Defendants, including those presently denominated as fictitious parties, Defendants.**

**Defendants.**

**COMPLAINT**

COMES NOW the Plaintiffs in the above-styled matter and files this Complaint against the Defendants as follows:

**PARTIES AND JURISDICTION**

1.
  - a. Michael Morton is over the age of 19 years and a resident citizen of Baldwin County, Alabama.
  - b. Lisa Morton is over the age of 19 years and a resident citizen of Baldwin County, Alabama.
  - c. Jeremy Smith is over the age of 19 years and a resident citizen of Baldwin County, Alabama.
  - d. Lindsey Smith is over the age of 19 years and a resident citizen of Baldwin County, Alabama.



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- e. Robert Blauner is over the age of 19 years and a resident citizen of Baldwin County, Alabama.
- f. Pamela L. Blauner is over the age of 19 years and a resident citizen of Baldwin County, Alabama.
- g. Kirk Toth is over the age of 19 years and a resident citizen of Baldwin County, Alabama.
- h. Herbert Roberson is over the age of 19 years and a resident citizen of Baldwin County, Alabama.
- i. Amanda Roberson is over the age of 19 years and a resident citizen of Baldwin County, Alabama.
- j. Lance Cole Slater is over the age of 19 years and a resident citizen of Baldwin County, Alabama.
- k. Troy Williams is over the age of 19 years and a resident citizen of Baldwin County, Alabama.
- l. Josh Baker is over the age of 19 years and a resident citizen of Baldwin County, Alabama.
- m. Robert Stanley is over the age of 19 years and a resident citizen of Baldwin County, Alabama.
- n. Darbi Stanley is over the age of 19 years and a resident citizen of Baldwin County, Alabama.
- o. Shelby Douglas is over the age of 19 years and a resident citizen of Baldwin County, Alabama.
- p. John Bender is over the age of 19 years and a resident citizen of Baldwin County, Alabama.
- q. Tena Bender is over the age of 19 years and a resident citizen of Baldwin County, Alabama.



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- r. Matthew Beal is over the age of 19 years and a resident citizen of Baldwin County, Alabama.
- s. Cheyenne Beal is over the age of 19 years and a resident citizen of Baldwin County, Alabama.
- t. Cecil Perry is over the age of 19 years and a resident citizen of Baldwin County, Alabama.
- u. Nancy Perry is over the age of 19 years and a resident citizen of Baldwin County, Alabama.
- v. Christopher Davis is over the age of 19 years and a resident citizen of Baldwin County, Alabama.
- w. Hannis Roberts is over the age of 19 years and a resident citizen of Baldwin County, Alabama.
- x. Carlis Lairson is over the age of 19 years and a resident citizen of Baldwin County, Alabama.
- y. Sheri Lairson is over the age of 19 years and a resident citizen of Baldwin County, Alabama.
- z. Jess Kalis is over the age of 19 years and a resident citizen of Baldwin County, Alabama.
- aa. Kathy Kalis is over the age of 19 years and a resident citizen of Baldwin County, Alabama.
- bb. Christi Dixon is over the age of 19 years and a resident citizen of Baldwin County, Alabama.
- cc. Andrew Ray Merriweather is over the age of 19 years and a resident citizen of Baldwin County, Alabama.
- dd. Heather Merriweather is over the age of 19 years and a resident citizen of Baldwin County, Alabama.



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- ee. Geri Lynn McCane is over the age of 19 years and a resident citizen of Baldwin County, Alabama.
- ff. Edward Mitchell is over the age of 19 years and a resident citizen of Baldwin County, Alabama.
- gg. Sager J. Hamdan is over the age of 19 years and a resident citizen of Baldwin County, Alabama.
- hh. Roy Ashton is over the age of 19 years and a resident citizen of Baldwin County, Alabama.
- ii. Michelle Ashton is over the age of 19 years and a resident citizen of Baldwin County, Alabama.
- jj. Sean Garrison is over the age of 19 years and a resident citizen of Baldwin County, Alabama.
- kk. Patrick Callaghan is over the age of 19 years and a resident citizen of Baldwin County, Alabama.
- ll. Liz Callaghan is over the age of 19 years and a resident citizen of Baldwin County, Alabama.
- mm. Lauren Sumrall is over the age of 19 years and a resident citizen of Baldwin County, Alabama.
- nn. Nicholas Hoots is over the age of 19 years and a resident citizen of Baldwin County, Alabama.
- oo. Dan Hodson is over the age of 19 years and a resident citizen of Baldwin County, Alabama.
- pp. Janet White is over the age of 19 years and a resident citizen of Baldwin County, Alabama.
- qq. Heidi Davis is over the age of 19 years and a resident citizen of Baldwin County, Alabama.



DOCUMENT 2

- rr. Nicholas West is over the age of 19 years and a resident citizen of Baldwin County, Alabama.
- ss. Brenda Lynn Hinote is over the age of 19 years and a resident citizen of Baldwin County, Alabama.
- tt. Roy Settles is over the age of 19 years and a resident citizen of Baldwin County, Alabama.
- uu. Adam Cooley is over the age of 19 years and a resident citizen of Baldwin County, Alabama.
- vv. Mark Vontroba is over the age of 19 years and a resident citizen of Baldwin County, Alabama.
- ww. Christopher Lee Sanders is over the age of 19 years and a resident citizen of Baldwin County, Alabama.
- xx. Chris Butler is over the age of 19 years and a resident citizen of Baldwin County, Alabama.
- yy. Crystal Butler is over the age of 19 years and a resident citizen of Baldwin County, Alabama.
- zz. George Messer is over the age of 19 years and a resident citizen of Baldwin County, Alabama.
- aaa. Kathleen Messer is over the age of 19 years and a resident citizen of Baldwin County, Alabama.
- bbb. Brent Parnell is over the age of 19 years and a resident citizen of Baldwin County, Alabama.
- ccc. Tammy Parnell is over the age of 19 years and a resident citizen of Baldwin County, Alabama.
- ddd. James Stewart is over the age of 19 years and a resident citizen of Baldwin County, Alabama.



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eee. James Funderburg is over the age of 19 years and a resident citizen of Baldwin County, Alabama.

fff. Ariel Haley Funderburg is over the age of 19 years and a resident citizen of Baldwin County, Alabama.

ggg. Nada Blamachan Permanand is over the age of 19 years and a resident citizen of Baldwin County, Alabama.

hhh. Tim Kent is over the age of 19 years and a resident citizen of Baldwin County, Alabama.

iii. Stacie Kent is over the age of 19 years and a resident citizen of Baldwin County, Alabama.

jjj. Timothy Gier is over the age of 19 years and a resident citizen of Baldwin County, Alabama.

kkk. Michelle Gier is over the age of 19 years and a resident citizen of Baldwin County, Alabama.

lll. Rick Sullivan is over the age of 19 years and a resident citizen of Baldwin County, Alabama.

mmm. Melissa Sullivan is over the age of 19 years and a resident citizen of Baldwin County, Alabama.

nnn. Daniel Owsley is over the age of 19 years and a resident citizen of Baldwin County, Alabama.

ooo. Christopher Taylor is over the age of 19 years and a resident citizen of Baldwin County, Alabama.

ppp. Sharron Mattison is over the age of 19 years and a resident citizen of Baldwin County, Alabama.

qqq. David Harrison is over the age of 19 years and a resident citizen of Baldwin County, Alabama.

rrr. Roxanne Harrison is over the age of 19 years and a resident citizen of Baldwin County, Alabama.



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sss. Sara Winchester is over the age of 19 years and a resident citizen of Baldwin County, Alabama.

ttt. Terrie Owens is over the age of 19 years and a resident citizen of Baldwin County, Alabama.

uuu. David Owens is over the age of 19 years and a resident citizen of Baldwin County, Alabama.

vvv. John Bogl is over the age of 19 years and a resident citizen of Baldwin County, Alabama.

www. Tiffany Bogl is over the age of 19 years and a resident citizen of Baldwin County, Alabama.

xxx. Steve Wiger is over the age of 19 years and a resident citizen of Baldwin County, Alabama.

yyy. Jerry Maddox is over the age of 19 years and a resident citizen of Baldwin County, Alabama.

zzz. Loan M. Nguygen is over the age of 19 years and a resident citizen of Baldwin County, Alabama.

aaaa. James White is over the age of 19 years and a resident citizen of Baldwin County, Alabama.

bbbb. Tara White is over the age of 19 years and a resident citizen of Baldwin County, Alabama.

cccc. Carlton Washington is over the age of 19 years and a resident citizen of Baldwin County, Alabama.

dddd. Cody Miles is over the age of 19 years and a resident citizen of Baldwin County, Alabama.

eeee. Victoria Miles Reed is over the age of 19 years and a resident citizen of Baldwin County, Alabama.

ffff. Benjamin White is over the age of 19 years and a resident citizen of Baldwin County, Alabama.



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gggg. Jacob Van Blake is over the age of 19 years and a resident citizen of Baldwin County, Alabama.

hhhh. Richard Harper is over the age of 19 years and a resident citizen of Baldwin County, Alabama.

iiii. Cynthia Hintz is over the age of 19 years and a resident citizen of Baldwin County, Alabama.

jjjj. Todd Campbell is over the age of 19 years and a resident citizen of Baldwin County, Alabama.

2. D.R. Horton, Inc. is a foreign corporation conducting business in Baldwin County, Alabama.
3. D.R. Horton, Inc. – Birmingham is an Alabama Corporation conducting business in Baldwin County, Alabama.
4. Bethel Engineering, Inc. is an Alabama Corporation conducting business in Baldwin County, Alabama.
5. Defendants, A, B, C, D, E, and/or F being those persons, corporations, firms or entities who were the engineers, designers, developers, contractors, subcontractors, agents, entities or other persons whose conduct caused or contributed to the deceptive acts by the Defendant's for which have caused damages to the Plaintiffs and whose identity or identities are not currently known to the Plaintiffs and are not readily ascertainable at this time, but will be substituted by amendment to this Complaint, should each action become necessary or appropriate, as provided for in Rule 9(h) of the *Alabama Rules of Civil Procedure*.
6. Defendants, G, H, I, J, K, and/or L, being those persons, corporations, firms or other entities responsible for creating, causing and/or continuing to commit a nuisance, trespass, negligence, or wantonness causing damage to the Plaintiffs, and whose identity or identities are not currently known to the Plaintiffs and are not readily ascertainable at this time, but will be substituted by amendment to this Complaint, should each action become necessary or appropriate, as provided for in Rule 9(h) of the *Alabama Rules of Civil Procedure*.
7. The amount in controversy exceeds the jurisdictional limits of this Honorable Court, exclusive of interest and costs.



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**FACTUAL BACKGROUND**

8. D.R. Horton, Inc. and D.R. Horton, Inc. – Birmingham are residential construction companies who develop neighborhoods and build individual residential homes for direct sale in Baldwin County, Alabama. D.R. Horton, Inc. and D.R. Horton, Inc. – Birmingham, constructed the homes of each Plaintiff in this action.
9. Bethel Engineering, Inc., upon information and belief, is the engineering entity who approved plans, supervised the construction project with respect to Institute for Business and Homes Safety (IBHS) Fortified Home Technical Requirements, in an effort to have the home receive a Gold Fortified certificate pursuant to IBHS Fortified Technical Requirements.
10. The address for the residential homes of the Plaintiffs are as follows:

408 Pogue Street	Gulf Shores	AL	36542
440 Pogue Street	Gulf Shores	AL	36542
443 Pogue Street	Gulf Shores	AL	36542
8048 Irwin Loop	Daphne	AL	36526
21880 Yosemite Blvd	Fairhope	AL	36532
13047 Hatchet Creek Ave	Fairhope	AL	36532
20968 Yosemite Blvd	Fairhope	AL	36532
21638 Gullfoss St	Fairhope	AL	36532
8053 Pickwick Dr.	Foley	AL	36535
8073 Pickwick Dr.	Foley	AL	36535
18039 Lewis Smith Dr.	Foley	AL	36535
18057 Lewis Smith Dr.	Foley	AL	36535
7932 Pickwick Dr.	Foley	AL	36535
17316 Lewis Smith Dr.	Foley	AL	36535
17964 Lewis Smith Dr.	Foley	AL	36535
17965 Lewis Smith Dr.	Foley	AL	36535
17848 Lewis Smith Dr.	Foley	AL	36535
27874 Smarty Jones Cr.	Daphne	AL	36526
24147 Harvester Dr.	Loxley	AL	36551
24203 Harvester Dr.	Loxley	AL	36551
24082 Harvester Dr.	Loxley	AL	36551
24286 Harvester Dr.	Loxley	AL	36551
24342 Harvester Dr.	Loxley	AL	36551



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24644 Spectacular Bid Loop	Daphne	AL	36526
16620 Walstan Drive	Loxley	AL	36551
11721 Agora Drive	Daphne	AL	36526
17729 Lewis Smith Dr.	Foley	AL	36535
24222 Harvester Dr.	Loxley	AL	36551
336 Nandina Loop	Fairhope	AL	36532
24314 Harvester Dr.	Loxley	AL	36551
24294 Harvester Dr.	Loxley	AL	36551
16704 Walston Dr.	Loxley	AL	36551
332 Nandina Loop	Fairhope	AL	36532
339 Nandina Loop	Fairhope	AL	36532
17071 Lanier	Foley	AL	36535
18065 Lewis Smith	Foley	AL	36535
17998 Lewis Smith	Foley	AL	36535
17426 Lewis Smith	Foley	AL	36535
17449 Harding Drive	Foley	AL	36535
18049 Lewis Smith	Foley	AL	36535
18357 Lewis Smith	Foley	AL	36535
8065 Pickwick	Foley	AL	36535
1916 Hogan Dr.	Gulf Shores	AL	36542
31601 Memphis Loop	Spanish Fort	AL	36527
12820 Warbler	Daphne	AL	36526
17081 Lanier Blvd	Foley	AL	36535
17695 Lewis Smith Dr.	Foley	AL	36535
9963 Volterra	Daphne	AL	36526
9723 Bellaton Ave.	Daphne	AL	36526
24378 Chantilly Lane	Daphne	AL	36526
216 Rhineheart Lane	Foley	AL	36535
9944 Volterra Ave.	Daphne	AL	36526
9474 Bella Dr.	Daphne	AL	36526
11800 Alabaster Dr.	Daphne	AL	36526
31940 Calder Ct.	Daphne	AL	36526
11680 Alameda Ct.	Daphne	AL	36526
9456 Amethyst Dr.	Daphne	AL	36526
112 Landing Road	Foley	AL	36535
24365 Harvester Drive	Loxley	AL	36551
24276 Harvester Drive	Loxley	AL	36551



## DOCUMENT 2

13157 Sanderling	Daphne	AL	36526
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11. The Plaintiffs have all taken possession of their homes within the statute of limitations period for all available causes of action. Furthermore, the Plaintiffs all became aware of the deceptive and/or fraudulent activities being the basis of this lawsuit within one (1) year of today's date.
12. D.R. Horton, Inc., D.R. Horton Inc., - Birmingham, and Bethel Engineering, Inc. represented to the Plaintiffs that they took pride in their work and would build a quality home with good workmanship, demonstrating this point by providing information of prior construction and representations of what their completed construction would look like.
13. D.R. Horton, Inc., D.R. Horton Inc., - Birmingham, and Bethel Engineering, Inc. represented to the Plaintiffs that the homes they were purchasing would be Gold Fortified, as described in the Institute for Business and Home Safety (IBHS) Fortified Home Technical Home Requirements.
14. The Plaintiffs were provided with a certificate from IBHS stating that their homes met the standards of Gold Fortified, as provided in the IBHS Fortified Home Technical Requirements. This certificate was provided pursuant to acts and submissions made by D.R. Horton, Inc., D.R. Horton Inc., - Birmingham, and Bethel Engineering, Inc., or agents of D.R. Horton, Inc., D.R. Horton Inc., - Birmingham, and Bethel Engineering, Inc.
15. The representations and actions by D.R. Horton, Inc., D.R. Horton Inc., - Birmingham, and Bethel Engineering, Inc., or agents of D.R. Horton, Inc., D.R. Horton Inc., - Birmingham, and Bethel Engineering, Inc., have (1) caused confusion and misunderstanding as to the certification of their homes, (2) created a representation that their homes have sponsorship, characteristics, uses, benefits and qualities that they do not have, and (3) created a representation that their homes are of a particular standards, quality or grade, or that their homes are of a particular style or model, despite being that of another.
16. The Plaintiffs Homes do not meet the Gold Fortified Technical Home Requirements for the following purposes:
  - a. Installed windows are non-impact, nor do they meet water and air filtration ratings;
  - b. Roof bracings and strappings are deficient;



## DOCUMENT 2

- c. Fasteners for roof underlayments are deficient;
  - d. The Foundations have multiple issues which are as follows:
    - i. The foundation sites are not properly prepped, or graded;
    - ii. In many homes, the foundation mesh, or welded wire fabric (WWF), is not properly placed;
    - iii. failure to maintain consistent slab thickness;
    - iv. lack of base material compaction;
    - v. poor base material elevation controls; and
    - vi. improperly installed foundation anchors and post-installed repair anchors;
  - e. Fasteners for vinyl siding are deficient;
  - f. Bracing of gable end walls are deficient; and
  - g. Varying other Baldwin County and municipal county code violations which would inhibit the homes from becoming code compliant (for example, weep holes not being adequately placed, foundation being too low to grade, flashing not being installed, etc.).
17. The Plaintiff's trusted D.R. Horton, Inc., D.R. Horton Inc., - Birmingham, and Bethel Engineering, Inc., or agents of D.R. Horton, Inc., D.R. Horton Inc., - Birmingham, and Bethel Engineering, Inc., and relied upon their statement and/or representations.
  18. The Plaintiffs have suffered significant damages in that their homes are not as valuable as they were led to believe, a fact that is made worse when you consider that many of the Plaintiffs have a mortgage through an entity that D.R. Horton, Inc., or a subsidiary of D.R. Horton, Inc., has ownership in, that is more than the current value of the homes. Additionally, in order to correct the issue, there are significant expenses in the form of construction costs to have the homes meet the standards provided in the IBHS Gold Fortified Technical Requirements.
  19. Prior to the filing of this action, the Plaintiffs have met all the statutory requirements designated in Code of Alabama, 1975, Section 8-19-1, *et. seq.*, to include those that give grounds for a private right of action in Code of Alabama, 1975, Section 8-19-10.



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Attached and incorporated hereto is the Notice letter provided pursuant to Code of Alabama, 1975, Section 8-19-10(e) (See Exhibit 1, which is attached and incorporated hereto).

20. In addition to the above, there are significant construction defects and areas where the Plaintiffs homes fail to meet the County or Municipal Building Codes applicable.
21. D.R. Horton, Inc., D.R. Horton Inc., - Birmingham, or their agents, hire employees to conduct various levels of work related to the construction of their homes and then supervise said employees during the duration of the construction projects. The construction of the Plaintiffs homes that pertains to this is not acceptable as noted in the above paragraphs.
22. Bethel Engineering, Inc., or their agents, hire employees to conduct various levels of work related to the IBHS Gold Fortified Technical Requirements and the submissions necessary to obtain said Gold Fortified certificates, they then supervise said employees while conducting the plans reviews, inspections and submissions in order to receive the Gold Fortified Certificates. The work conducted on Bethel Engineering Inc. behalf pertaining to the Plaintiffs homes is not acceptable as noted in the above paragraphs.
23. Upon information and belief, D.R. Horton, Inc. and D.R. Horton, Inc. – Birmingham have constructed the Plaintiffs homes in such a manner to where the water drainage is not draining as designed, and is in fact either not draining, leaving standing water in the yard, or draining to the homes, creating water intrusion issues and/or water nuisance issues.
24. The Plaintiffs have suffered damages as a result of water accumulation, accretion, intrusion, etc. in that their property value has decreased and/or they will incur expenses in an effort to have the water diverted in a different direction or to the intended drainage areas.
25. The Plaintiffs have suffered mental anguish and emotional distress as a result of the actions of D.R. Horton, Inc., D.R. Horton, Inc. – Birmingham, and Bethel Engineering, Inc., or agents of D.R. Horton, Inc., D.R. Horton Inc., - Birmingham, and Bethel Engineering, Inc.



## DOCUMENT 2

**COUNT I**  
**DECEPTIVE TRADE PRACTICE**  
**(Code of Alabama, 1975, Section 8-19-1, et. seq.)**  
**Against D.R. Horton, Inc., D.R. Horton, Inc. – Birmingham, and Bethel Engineering, Inc.**

26. The Plaintiffs incorporate the foregoing paragraphs as though fully set forth herein.
27. D.R. Horton, Inc., D.R. Horton Inc., - Birmingham, and Bethel Engineering, Inc., or agents of D.R. Horton, Inc., D.R. Horton Inc., - Birmingham, and Bethel Engineering, Inc., have (1) caused confusion and misunderstanding as to the certification of their homes, (2) created a representation that their homes have sponsorship, characteristics, uses, benefits and qualities that they do not have, and (3) created a representation that their homes are of a particular standards, quality or grade, or that their homes are of a particular style or model, despite being that of another.
28. In doing so, D.R. Horton, Inc., D.R. Horton Inc., - Birmingham, and Bethel Engineering, Inc., or agents of D.R. Horton, Inc., D.R. Horton Inc., - Birmingham, and Bethel Engineering, Inc., are in violation of Code of Alabama, 1975 Section 8-19-5.
29. A demand was made in accordance with Code of Alabama, 1975 Section 8-19-10(e), no tender has been extended by the Defendants (See Exhibit 1, which is attached and incorporated hereto).
30. As a proximate result thereof, the Plaintiffs have suffered damages for the loss of value to their home, repair costs, mental anguish and emotional distress.

WHEREFORE, the Plaintiffs respectfully demand judgment against the Defendants for all remedies available under Code of Alabama, 1975 Section 8-19-10(a)(1-3), to include actual damages, mental anguish, courts discretionary damages (up to three (3) times actual damages), and costs of the action, to include reasonable attorney's fees, and any other relief as deemed just and proper.

**COUNT II**  
**INJUNCTION**  
**Against D.R. Horton, Inc., D.R. Horton, Inc. – Birmingham, and Bethel Engineering, Inc.**

31. The Plaintiffs incorporate the foregoing paragraphs as though fully set forth herein.
32. Pursuant to authority provided in Code of Alabama, 1975 Section 8-19-1, et. seq. the Plaintiffs would ask the Court to enjoin the Defendants from further construction and/or engineering practices during the time in which they are non-complaint with Code of Alabama, 1975 Section 8-19-1, et. seq., or until this lawsuit has come to



## DOCUMENT 2

resolution on the matters. Any damages for which D.R. Horton, Inc., D.R. Horton Inc., - Birmingham, and Bethel Engineering, Inc. may incur are outweighed by the continued actions against the Plaintiffs and other unknowing parties willing to purchase a home from D.R. Horton, Inc., D.R. Horton Inc., - Birmingham, and Bethel Engineering, Inc. in Baldwin County, Alabama.

33. Accordingly, an Order from this Honorable Court requiring an Injunction will serve no public disservice, in fact, quite the opposite would be true.

WHEREFORE, the Plaintiff prays the Court to provide the following relief:

- a. That this Court issue a permanent injunction restraining and enjoining D.R. Horton, Inc., D.R. Horton Inc., - Birmingham, and Bethel Engineering, Inc. from:
  - i. Acting in a manner that would violate Code of Alabama, 1975 Section 8-19-1, *et. seq.*;
  - ii. Developing and Constructing homes, and/or home sites in Baldwin County, Alabama; and
  - iii. Certifying, supervising, and/or submitting materials to IBHS in an effort to obtain IBHS Gold Fortified certificates for residential home owners in Baldwin County, Alabama.
- b. That this Court assess all damages to which the Plaintiffs are entitled, as stated in Code of Alabama, 1975 Section 8-19-10(a)(1-3) in the Court's discretion in equity and at law; and
- c. Any further relief the Court deems appropriate under the circumstances.

**COUNT III**

**FRAUD**

**AS AN ALTERNATIVE COUNT TO COUNT I**

**Against D.R. Horton, Inc., D.R. Horton, Inc. – Birmingham, and Bethel Engineering, Inc.**

34. The Plaintiffs incorporate the foregoing paragraphs as though fully set forth herein.
35. D.R. Horton, Inc., D.R. Horton Inc., - Birmingham, and Bethel Engineering, Inc., or agents of D.R. Horton, Inc., D.R. Horton Inc., - Birmingham, and Bethel Engineering, Inc., made representations to the Plaintiffs that their residential homes meet the Fortified Home Technical Requirements for Gold Fortified, that the homes were in



## DOCUMENT 2

compliance with the municipal and county building codes, and were the product of quality workmanship,

36. The representations made by D.R. Horton, Inc., D.R. Horton Inc., - Birmingham, and Bethel Engineering, Inc., or agents of D.R. Horton, Inc., D.R. Horton Inc., - Birmingham, and Bethel Engineering, Inc. are false.
37. The Plaintiff's relied upon the representations of D.R. Horton, Inc., D.R. Horton Inc., - Birmingham, and Bethel Engineering, Inc., or agents of D.R. Horton, Inc., D.R. Horton Inc., - Birmingham, and Bethel Engineering, Inc.,
38. The Plaintiff's have suffered damages, to include financial and emotional damages, as a result of the false representations.

WHEREFORE, the Plaintiffs respectfully demand judgment against the Defendants, to include compensatory, mental anguish and punitive damages, plus interest and costs within the jurisdiction limits of this Court, and any other relief as deemed just and proper.

**COUNTY IV**  
**NEGLIGENCE**

**Against D.R. Horton, Inc., and D.R. Horton, Inc. – Birmingham**

39. The Plaintiffs incorporate the foregoing paragraphs as though fully set forth herein.
40. D.R. Horton, Inc., and D.R. Horton Inc., - Birmingham owed a duty to the Plaintiffs.
41. D.R. Horton, Inc., and D.R. Horton Inc., - Birmingham, or agents of D.R. Horton, Inc., and D.R. Horton Inc., - Birmingham, breached said duty by negligently constructing the home.
42. As a proximate result:
  - a. The Plaintiffs received windows of a lesser quality than that negotiated.
  - b. Roof bracings and strappings are deficient;
  - c. Fasteners for roof underlayments are deficient;
  - d. The Foundations have multiple issues which are as follows:
    - i. The foundation sites are not properly prepped, or graded;



## DOCUMENT 2

- ii. In many homes, the foundation mesh, or welded wire fabric (WWF), is not properly placed;
  - iii. failure to maintain consistent slab thickness;
  - iv. lack of base material compaction;
  - v. poor base material elevation controls; and
  - vi. improperly installed foundation anchors and post-installed repair anchors;
- e. Fasteners for vinyl siding are deficient;
  - f. Bracing of gable end walls are deficient;
  - g. Varying other Baldwin County and municipal county code violations which would inhibit the homes from becoming code compliant (for example, weep holes not being adequately placed, foundation being too low to grade, flashing not being installed, or installed correctly, protection/barrier wrap (Tyvek wrap) not properly secured or torn, etc.);
  - h. The site grading is subpar to the extent that water does not drain as designed.
43. As a proximate result thereof, the Plaintiffs have suffered damages for the loss of value to their home, mental anguish and emotional distress.

WHEREFORE, the Plaintiffs respectfully demand judgment against D.R. Horton, Inc., and D.R. Horton Inc., - Birmingham, to include compensatory damages and mental anguish, plus interest and costs within the jurisdiction limits of this Court, and any other relief as deemed just and proper.

**COUNT V**  
**NEGLIGENT HIRING, TRAINING, AND SUPERVISION**  
**Against D.R. Horton, Inc., and D.R. Horton, Inc. – Birmingham**

- 44. The Plaintiffs incorporates the foregoing paragraphs as though fully set forth herein.
- 45. D.R. Horton, Inc., and D.R. Horton Inc., - Birmingham, employed agents and/or employees in the construction of the residential homes of the Plaintiffs.
- 46. The employees were negligent in the construction of the residential homes of the Plaintiffs, to wit:



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- a. The Plaintiffs received windows of a lesser quality than that negotiated.
  - b. Roof bracings and strappings are deficient;
  - c. Fasteners for roof underlayments are deficient;
  - d. The Foundations have multiple issues which are as follows:
    - i. The foundation sites are not properly prepped, or graded;
    - ii. In many homes, the foundation mesh, or welded wire fabric (WWF), is not properly placed;
    - iii. failure to maintain consistent slab thickness;
    - iv. lack of base material compaction;
    - v. poor base material elevation controls; and
    - vi. improperly installed foundation anchors and post-installed repair anchors;
  - e. Fasteners for vinyl siding are deficient;
  - f. Bracing of gable end walls are deficient;
  - g. Varying other Baldwin County and municipal county code violations which would inhibit the homes from becoming code compliant (for example, weep holes not being adequately placed, foundation being too low to grade, flashing not being installed, or installed correctly, protection/barrier wrap (Tyvek wrap) not properly secured or torn, etc.);
  - h. The site grading is subpar to the extent that water does not drain as designed.
47. D.R. Horton, Inc. and D.R. Horton, Inc. - Birmingham, was aware of said negligent construction work, or should have been aware by exercising reasonable care.
48. D.R. Horton, Inc. and D.R. Horton, Inc. - Birmingham failed to exercise such reasonable care.
49. As a proximate result thereof, the Plaintiffs have suffered damages for the loss of value to their home, mental anguish and emotional distress.



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WHEREFORE, the Plaintiffs respectfully demand judgment against D.R. Horton, Inc., and D.R. Horton Inc., - Birmingham, to include compensatory damages and mental anguish, plus interest and costs within the jurisdiction limits of this Court, and any other relief as deemed just and proper.

**COUNT VI**  
**WANTONNESS**

**Against D.R. Horton, Inc., and D.R. Horton, Inc. – Birmingham**

50. The Plaintiffs incorporate the foregoing paragraphs as though fully set forth herein.
51. The D.R. Horton, Inc. and D.R. Horton, Inc. - Birmingham wantonly constructed the Plaintiffs homes.
52. As a proximate result:
  - a. The Plaintiffs received windows of a lesser quality than that negotiated.
  - b. Roof bracings and strappings are deficient;
  - c. Fasteners for roof underlayments are deficient;
  - d. The Foundations have multiple issues which are as follows:
    - i. The foundation sites are not properly prepped, or graded;
    - ii. In many homes, the foundation mesh, or welded wire fabric (WWF), is not properly placed;
    - iii. failure to maintain consistent slab thickness;
    - iv. lack of base material compaction;
    - v. poor base material elevation controls; and
    - vi. improperly installed foundation anchors and post-installed repair anchors;
  - e. Fasteners for vinyl siding are deficient;
  - f. Bracing of gable end walls are deficient;
  - g. Varying other Baldwin County and municipal county code violations which would inhibit the homes from becoming code compliant (for example, weep holes



## DOCUMENT 2

not being adequately placed, foundation being too low to grade, flashing not being installed, or installed correctly, protection/barrier wrap (Tyvek wrap) not properly secured or torn, etc.);

h. The site grading is subpar to the extent that water does not drain as designed.

53. As a proximate result thereof, the Plaintiffs have suffered damages for the loss of value to their home, mental anguish and emotional distress.

WHEREFORE, the Plaintiffs respectfully demand judgment against D.R. Horton, Inc., and D.R. Horton Inc., - Birmingham, to include compensatory, mental anguish and punitive damages, plus interest and costs within the jurisdiction limits of this Court, and any other relief as deemed just and proper.

**COUNT VII**  
**NEGLIGENCE**  
**Against Bethel Engineering, Inc.**

54. The Plaintiffs incorporate the foregoing paragraphs as though fully set forth herein.
55. Bethel Engineering, Inc., owed a duty to the Plaintiffs.
56. Bethel Engineering, Inc., or agents of Bethel Engineering, Inc., breached said duty by negligently certifying plans, supervising the construction project, submitting materials to IBHS for Gold Fortification certification, and/or inspecting the Plaintiffs homes to ensure the homes meet the requirements for Gold Fortified standards in accordance with the IBHS Fortified Home Technical Requirements.
57. As a proximate result, the Plaintiffs received a home that does not meet the Gold Fortified standards in accordance with the IBHS Fortified Home Technical Requirements.
58. As a proximate result thereof, the Plaintiffs have suffered damages for the loss of value to their home, mental anguish and emotional distress.

WHEREFORE, the Plaintiffs respectfully demand judgment against Bethel Engineering, Inc. to include compensatory damages and mental anguish, plus interest and costs within the jurisdiction limits of this Court, and any other relief as deemed just and proper.

**COUNT VIII**  
**NEGLIGENT HIRING, TRAINING, AND SUPERVISION**  
**Against Bethel Engineering, Inc.**

59. The Plaintiffs incorporates the foregoing paragraphs as though fully set forth herein.



## DOCUMENT 2

60. Bethel Engineering, Inc., employed agents and/or employees to certify plans, supervise the construction project, submitting materials to IBHS for Gold Fortification certification, and/or inspect the Plaintiffs homes to ensure the homes meet the requirements for Gold Fortified standards in accordance with the IBHS Fortified Home Technical Requirements.
61. The employees were negligent in certifying plans, supervising the construction project, submitting materials to IBHS for Gold Fortification certification, and/or inspecting the Plaintiffs homes to ensure the homes meet the requirements for Gold Fortified standards in accordance with the IBHS Fortified Home Technical Requirements.
62. Bethel Engineering, Inc. was aware of said negligence, or should have been aware by exercising reasonable care.
63. Bethel Engineering, Inc. failed to exercise such reasonable care.
64. As a proximate result thereof, the Plaintiffs have suffered damages for the loss of value to their home, mental anguish and emotional distress.

WHEREFORE, the Plaintiffs respectfully demand judgment against Bethel Engineering, Inc., to include compensatory damages and mental anguish, plus interest and costs within the jurisdiction limits of this Court, and any other relief as deemed just and proper.

**COUNT IX**  
**WANTONNESS**

**Against D.R. Horton, Inc., and D.R. Horton, Inc. – Birmingham**

65. The Plaintiffs incorporate the foregoing paragraphs as though fully set forth herein.
66. Bethel Engineering, Inc., owed a duty to the Plaintiffs.
67. Bethel Engineering, Inc., or agents of Bethel Engineering, Inc., wantonly certified plans, supervised the construction project, submitted materials to IBHS for Gold Fortification certification, and/or inspected the Plaintiffs homes to ensure the homes meet the requirements for Gold Fortified standards in accordance with the IBHS Fortified Home Technical Requirements.
68. As a proximate result, the Plaintiffs received a home that does not meet the Gold Fortified standards in accordance with the IBHS Fortified Home Technical Requirements.



## DOCUMENT 2

69. As a proximate result thereof, the Plaintiffs have suffered damages for the loss of value to their home, mental anguish and emotional distress.
70. As a proximate result thereof, the Plaintiffs have suffered damages for the loss of value to their home, mental anguish and emotional distress.

WHEREFORE, the Plaintiffs respectfully demand judgment against Bethel Engineering, Inc., to include compensatory, mental anguish and punitive damages, plus interest and costs within the jurisdiction limits of this Court, and any other relief as deemed just and proper.

**COUNT X**  
**NUISANCE**

**Against D.R. Horton, Inc., and D.R. Horton, Inc. – Birmingham**

71. The Plaintiffs incorporate the foregoing paragraphs as though fully set forth herein.
72. D.R. Horton, Inc. and D.R. Horton, Inc. - Birmingham constructed and/or developed the Plaintiffs homes and neighborhoods in such a manner as to cause water, to include rainwater, to flow onto and accumulate on the Plaintiffs properties.
73. The flow onto and accumulation of water, to include rainwater, on the Plaintiffs property, caused by the activities of D.R. Horton, Inc. and D.R. Horton, Inc. - Birmingham, was such that it would affect and interfere with an ordinary and reasonable person's use and enjoyment of their property.
74. The flow onto and accumulation of water, to include rainwater, on the Plaintiffs property due to the activities of D.R. Horton, Inc. and D.R. Horton, Inc. - Birmingham constitutes a nuisance.
75. The flow onto and accumulation of water, to include rainwater, on the Plaintiffs property, having continued from when the development began until the current date, is a continuous and/or permanent nuisance.
76. The flowing of water, to include rainwater, onto and accumulating on the Plaintiffs property has affected the property and caused substantial harm to it.
77. As a proximate consequence of the aforesaid nuisance, the Plaintiffs have been caused to suffer the following damages:
  - a. Loss of use and enjoyment of her property;
  - b. Damage to her property and appurtenances thereto;



DOCUMENT 2

- c. Economic loss, including, but not limited to, a diminution of the value and marketability of her property; and,
- d. Mental anguish and emotional distress.

WHEREFORE, the Plaintiffs respectfully demand judgment against D.R. Horton, Inc., and D.R. Horton Inc., - Birmingham, to include compensatory, mental anguish and punitive damages, plus interest and costs within the jurisdiction limits of this Court, and any other relief as deemed just and proper.

Respectfully Submitted,

By: /S/ J. THOMAS PILCHER, IV  
J. Thomas Pilcher, IV (PIL013)  
Attorney for Plaintiff

By: /S/ David L. Sheller  
David L. Sheller (SHE026)  
Attorney for Plaintiff

WILKINS, BANKESTER, BILES  
& WYNNE, P.A.  
PO Box 400  
Bay Minette, AL. 36507  
251-937-7024  
[tpilcher@wbbwlaw.com](mailto:tpilcher@wbbwlaw.com)

SHELLER LAW FIRM, PLLC  
360 FM 1959  
Houston, TX 77034  
832-841-1175  
[david@shellerlawfirm.com](mailto:david@shellerlawfirm.com)

**Plaintiff's demand a trial by jury of all issues involved herein.**

/S/ J. THOMAS PILCHER, IV  
J. Thomas Pilcher, IV (PIL013)



DOCUMENT 2

Serve Defendant's as follows:

D.R. Horton, Inc. – Birmingham  
CT Corporation  
2 N. Jackson Street  
Suite 605  
Montgomery, Alabama 36104

D.R. Horton, Inc.  
301 Commerce Street  
Fort Worth, Texas 76102

Bethel Engineering  
Robert Galloway  
3263 Cottage Hill Road  
Mobile, Alabama 36606



DOCUMENT 3

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BALDWIN COUNTY, ALABAMA  
JODY L. WISE, CLERK



**WILKINS, BANKESTER, BILES & V**  
A PROFESSIONAL ASSOCIATION  
LAWYERS

201 E. Second Street  
Post Office Box 400  
Bay Minette, Alabama 36507  
Telephone (251) 937-7024  
Fax (251) 937-6190



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BALDWIN COUNTY, ALABAMA  
JODY L. WISE, CLERK

TAYLOR D. WILKINS, JR.  
MARION E. WYNNE, JR.  
MARCUS E. MCDOWELL  
J. THOMAS PILCHER, IV  
N. TREY CANIDA

FAIRHOPE OFFICE  
221 Fairhope Ave  
Post Office Box 1367  
Fairhope, Alabama 36533  
Telephone (251) 928-1915  
Fax (251) 928-1967

CLAUDE E. BANKESTER (1928-1993)  
KREG L. MORRIS (1969-2001)  
BAYLESS E. BILES (Retired, 2015)

October 12, 2021

DR Horton, Inc. – Birmingham  
CT Corporation  
2 N. Jackson Street  
Suite 605  
Montgomery, Alabama. 36104

*Via Hand Delivery at:*

*7856 West Side Park Dr.  
Mobile, Alabama. 36695*

DR Horton, Inc.  
301 Commerce Street  
Fort Worth, Texas 76102

**RE: Notice of violations with respect to the Alabama Deceptive Trade Practices Act**

To Whom it May Concern:

My firm, along with David Sheller and the Sheller law Firm PLLC, have the pleasure of representing sixty-one (61) home owners all within Baldwin County, Alabama that have purchased homes built by DR Horton. At the time of closing, all of these homeowners were assured they were purchasing a "gold fortified" home. Upon information and belief, this was marketed to each homeowner, and each homeowner does in fact have a gold fortified certificate. In reality, each of these homes are not gold fortified. Attached hereto to this letter is the findings of CTL Group, Intertek and Team Complete. Within those reports you will see that the homes tested were diverse in their region of the County, but similar in that they shared similar defects. Not a single home inspected meets the gold fortification standards outlined in the Insurance Institute for Business and Home Safety (IBHS) Fortified Home Technical Home Requirements (Attached hereto for your convenience). Those deficiencies include, but are not limited to:

- a) Windows do not meet standards. Installed windows are non-impact.  
Additionally, of the windows tested, the water and air filtration ratings are not to

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## DOCUMENT 3

October 12, 2021

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DR Horton; Notice of Violations of DTPA

satisfactory requirements.

- b) Roof bracings and strappings are deficient and not to standards required as noted in the CTL Group Report and inspection reports by Team Complete.
- c) Fasteners for roof underlayments are deficient and not to standards required as noted in the CTL Group Report and inspection reports by Team Complete.
- d) The foundation sites are not properly prepped, or graded. As such, foundations do not meet the code requirements. Further, the foundations which have been inspected provide that the mesh, or welded wire fabric (WWF), is not properly placed; there is a failure to maintain consistent slab thickness; lack of base material compaction; poor base material elevation controls; improperly installed foundation anchors and post-installed repair anchors (often being visible from outside the foundation) as noted in the CTL Group Report and inspection reports by Team Complete.
- e) Fasteners for vinyl siding are deficient and not to standards required as noted in the CTL Group Report and inspection reports by Team Complete.
- f) Bracing of gable end walls are deficient and not to standards required as noted in the CTL Group Report and inspection reports by Team Complete.
- g) Varying other Baldwin County and municipal county code violations which would inhibit the homes from becoming code compliant (for example, weep holes not being adequately placed, foundation being too low to grade, flashing not being installed, etc.).

In multiple homes we have noted that flashing and Tyvek wrap has not been properly installed. At this time, we have only destructively tested one home, but in that home, we found the brick was not tied down in the areas removed, the Tyvek wrap was not properly tucked in the window (causing water to access the interior of the home), the Tyvek wrap and the flashings were situated in such a manner that would actually accumulate and hold water against the wood frame, and the brick mortar was back filed to such an extent that water could not be released through weep holes. We believe this will be found in each home.

In addition to the reports noted, I have included photographs and inspection reports from Team Complete for each of the sixty-one (61) home owners. These reports detail the issues noted above and list the repairs for each home necessary to bring the home within the gold fortified standards, and would also bring them compliant with municipal and county construction ordinances as well.

Alabama, as a State Legislature, acknowledged that consumers, such as our clients, need protection for public health, welfare and interest. And as such, the Deceptive Trade Practices Act was codified (Code of Alabama, 1975, Section 8-19-1, *et. seq.*). Under the statute, conduct such as yours, is an unlawful trade practice. Here, DR Horton marketed and advertised these houses to be gold fortified and compliant with county and municipal construction ordinances. These practices are violative of Section 8-19-5, (2), (5) and (7), which states:

“The following deceptive acts or practices in the conduct of any trade or commerce are



## DOCUMENT 3

October 12, 2021  
DR Horton; Notice of Violations of DTPA

Page 3 of 5

hereby declared to be unlawful:

(2) Causing confusion or misunderstanding as to the source, sponsorship, approval, or certification of goods or services.

(5) Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or qualities that they do not have or that a person has sponsorship, approval, status, affiliation, or connection that he or she does not have.

(7) Representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another."

Code of Alabama, 1975, Section 8-19-5.

Pursuant to Section 8-19-10, a citizen has a private right of action for such violations. Section (e) states that notice must be given "at least 15 days prior to the filing of any action under this section...". (Code of Alabama, 1975, Section 8-19-10(e)). Please understand, this letter is being written to provide the notice described in section (e). Further, each of our sixty-one (61) clients intend to bring an action in the event this demand is rejected within fifteen (15) days from demand.

The damages for which one can receive in a private right of action are detailed in Section 8-19-10(a)(1)-(3), which provides:

"(a) Any person who commits one or more of the acts or practices declared unlawful under this chapter and thereby causes monetary damage to a consumer, and any person who commits one or more of the acts or practices declared unlawful in subdivisions (19) and (20) of Section 8-19-5 and thereby causes monetary damage to another person, shall be liable to each consumer or other person for:

(1) Any actual damages sustained by such consumer or person, or the sum of \$100, whichever is greater; or

(2) Up to three times any actual damages, in the court's discretion. In making its determination under this subsection, the court shall consider, among other relevant factors, the amount of actual damages awarded, the frequency of the unlawful acts or practices, the number of persons adversely affected thereby and the extent to which the unlawful acts or practices were committed intentionally; and

(3) In the case of any successful action or counterclaim to enforce the foregoing liability or in which injunctive relief is obtained, the costs of the action or counterclaim, together with a reasonable attorney's fee. On a finding by the court that an action or counterclaim under this section was frivolous or brought in bad faith or for the purpose of harassment, the court shall award to the defendant (or counterclaim-defendant) reasonable attorney's fees and costs."

Code of Alabama, 1975, 8-19-10(a)(1)-(3).

Within our clients, we have several factors that are creating damages. Their homes value is diminished due to the repair issues noted in the CTL report and Team Complete Inspections



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October 12, 2021  
 DR Horton; Notice of Violations of DTPA

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Reports. Gold Fortified homes in and of themselves have a value. Meaning, a gold fortified home is worth more than a non-gold fortified home. These homes automatically drop in value by losing that designation, and does so significantly. Additionally, there will be an increase in expenses associated with the home. For example, by the home not being gold fortified, home insurance will increase on each house by as much as thirty percent (30%) annually, if not more. The repair estimates range and are detailed on each Inspection Report attached. The total repair costs on the sixty-one (61) homes is Eleven Million, Five Hundred Seventy-Eight Thousand, Two Hundred Fifty-Seven Dollars and 80/100's (\$11,578,257.80).

As you know, these homes are being purchased by individuals who do not have the spare monies to pay for this type of repair. As such, the anxiety of this situation has been difficult to say the least. They are being forced to live in homes that have mildewed, had water intrusion, water drainage issues, and much more. Living with this, and the fear of not being able to afford the repairs is something that the parties could recover for under mental anguish.

As a citizen of Baldwin County, seeing the results of this inspection have been concerning and disappointing. It appears these homes, similar to other neighborhoods in other states that DR Horton constructed, are being built with little care and concern. Therefore, they are going to have significant structural and repairs in the near future. Many of these home owners will not be able to afford such repairs, and therefore, we will have major safety issues and future community blight. In the event this demand is rejected, in accordance with the statutes, we will be pursuing an injunction to halt construction of homes that are not compliant with Gold Fortification Standards and county and municipal construction codes. This will be done to get your construction practices in conformance with the promises that your company is making to each home owner.

With respect to this demand, we have reviewed each homeowner to ensure they are eligible to bring claims under the Deceptive Trade Practices Act (DTPA). I would ask you to take note that other construction defect claims are viable to bring in addition to the DTPA claim that could potentially allow for additional damages, like mental anguish (breach of contract). However, for the purposes of this demand, we have not included mental anguish.

In an attempt to streamline this, I am making an offer that would allow for settlement of all sixty-one (61) homeowners at a single time. It would allow for DR Horton to make a payment, and my firm would handle the transaction and transfer of funds to each individual homeowner. In doing so, we would request the full balance of repair estimates, which equates to Eleven Million, Five Hundred Seventy-Eight Thousand, Two Hundred Fifty-Seven Dollars and 80/100's (\$11,578,257.80). In an effort to promote compromise, we would only ask for two (2) times those damages, as opposed to the three (3) we would be capable of recovering, which equates to Twenty-Three Million, One Hundred Fifty-Six Thousand, Five Hundred Fifteen Dollars and 60/100's (\$23,156,515.60). Finally, as we would be entitled to attorney's fees, we would ask for those in the amount of Twelve Million, One Hundred Fifty-Seven Thousand, One Hundred Seventy dollars and 70/100's (\$12,157,170.70). The sum total of all funds would be Forty-six Million, Eight Hundred Ninety-One Thousand, Nine Hundred Forty-Four Dollars and 10/100's (\$46,891,944.10).

Please note that Section (e) of Code of Alabama, 1975, Section 8-19-10, provides that a response accepting, tendering an offer, or rejection is due within fifteen (15) days of receipt of this letter.



DOCUMENT 3

October 12, 2021  
DR Horton; Notice of Violations of DTPA

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I look forward to hearing from you.

Sincerely,

WILKINS, BANKESTER, BILES & WYNNE

---

J. Thomas Pilcher IV

SHELLER LAW FIRM, PLLC

/s/David Sheller (with permission)  
David Sheller

Enclosures: Zip Drive containing above mentioned documents



DOCUMENT 4



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The Sheller Law Firm, P.L.L.C.  
360 FM 1959  
Houston, Texas 77034

(832) 841-1175

(281) 484-2101 (Fax)

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*David L. Sheller*  
*Board Certified, Personal Injury Trial Law*  
*Texas Board of Legal Specialization*

October 15, 2021

DR Horton, Inc. – Birmingham

CT Corporation

2 N. Jackson Street Suite 605

Montgomery, Alabama. 36104

Via Hand Delivery at: 7856 West Side Park Dr.

Mobile, Alabama. 36695

DR Horton, Inc.

301 Commerce Street

Fort Worth, Texas 76102

Re: Supplement to October 12, 2021 Notice Letter re 61 homes

To Whom It May Concern:

Mental anguish and emotional distress are actual damages. That is especially true in the cases against Horton. Our clients now know their homes are not safe to protect their from a category 3 storm and their biggest investment is at risk. Homeowners also have had continuing problems with the D.R. Horton failure to repair their homes and homeowners and their families are going to have to move out for months while their homes are repaired. There is no place to move to as apartments are full and have long waiting lists. This is common knowledge and causes considerable anguish and distress. Uprooting families into small apartments or even the elderly

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causes emotional distress. Also included in this letter is the CTL Group letter regarding the inadequacy of the foundations.

Black's Law Dictionary defines actual damages as follows:

Are real, substantial and just damages, or the amount awarded to a complainant in compensation for his actual and real loss or injury, as opposed on the one hand to "nominal" damages, and on the other to "exemplary" or "punitive" damages. *Ross v. Leggett*, 61 Mich. 445, 28 N. W. 695. 1 Am. St Rep. 608; *Lord v. Wood*, 120 Iowa, 303, 94 N. W. 842; *Western Union Tel. Co. v. Lawson*, 66 Kan., 600, 72 Pac. 2S3; *Field v. Monster*, 11 Tex. Civ. App. 341, 32 S. W. 417; *Oliver v. Columbia, etc., R. Co.*, 05 S. C. 1, 43 S. E. 307; *Gatzow v. Buening*, 106 Wis. 1. 81 N. W. 1003, 49 L. R. A. 475, 80 Am. St. Rep. 1 ; *Osborn v. Leach*, 135 X. C. 02S 47 S. E. 811, 66 L. R. A. 648; Gen. St. Minn. 1S94..

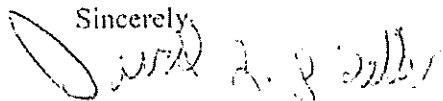
The demand is \$300,000 per home. People are worried about how their homes will be repaired, and the loss of their biggest investment. Older people may not qualify for another home if they have retired from the work force. For the 61 homes the additional demand is \$18,300,000 plus times two for \$54,900,000 and 35% attorneys fees to date for \$19,215,000. The attorneys fees will increase if suit is filed

As can be seen from the following Alabama verdicts our demand is quite reasonable. *Foster v. Life Ins. Co. of Ga.*, 656 So. 2d 333, 337 (Ala. 1994) (testimony that a defendant's conduct affected the plaintiff "a lot" resulted in a jury award of approximately \$250,000 in mental anguish damages for two months of emotional distress); *Delchamps, Inc. v. Bryant*, 738 So. 2d 824, 836-37 (Ala. 1999) (awarding approximately \$400,000 in mental anguish damages); *Ala. Power Co. v. Murray*, 751 So. 2d 494, 500-01 (Ala. 1999) (testimony that a plaintiff was "all shook up," and "[i]t was just hard," resulted in an award of approximately \$132,000 in mental anguish damages); *Nat'l Ins. Ass'n v. Sockwell*, 829 So. 2d 111, 132 (Ala. 2002) (awarding \$201,000 in compensatory damages, which the defendant claimed was solely attributable to mental anguish damages); *Cochran v. Ward*, 935 So. 2d 1169, 1176 (Ala. 2006) (noting it is not unusual for Alabama juries to award mental anguish damages of \$275,000 or more); *Keller v. NCAA, et al.*, CV-2004-28 (Jackson County, Alabama, 2007) (awarding \$1,000,000 in mental anguish damages).

: In the 2001 case of *Horton Homes, Inc. v. Brooks*, the Alabama Supreme Court cited other decisions as supporting the proposition that "[m]ental anguish includes anxiety, embarrassment, anger, fear, frustration, disappointment, worry, annoyance, and inconvenience."<sup>23</sup> Notably, Horton cited the portion of Volkswagen concluding that the jury charge was proper, not the portion quoting the exacting Black's definition.

In short, the Horton Defendants need to pay this demand in 15 days.

Sincerely,



David L. Sheller

Attorney for the Plaintiffs



## DOCUMENT 4



March 18, 2021

via email to: [david@shellerlawfirm.com](mailto:david@shellerlawfirm.com)

Mr. David L. Sheller  
The Sheller Law Firm, P.L.L.C.  
360 FM 1959  
Houston, Texas 77034

**Re: Foundation Observations  
Turnberry Crossing Investigation  
CTLGroup Project No. 000108**

Dear Mr. Sheller:

This summary letter outlines CTLGroup's review of foundation construction at the Turnberry Crossing subdivision (Figures 1 - 3) in Baldwin County, Alabama reported to have been constructed by D. R. Horton, Inc. CTLGroup documented foundation conditions at a number of homes under construction at this location during a review of several subdivisions performed in February 2021. Our first engineering report was issued on February 18, 2021.

A summary of our code review is as follows.

- Turnberry Crossing subdivision is situated in Baldwin County, Alabama and is located outside the city limits of nearby Foley, Alabama.
- Per the Baldwin County government website, "The Baldwin County building permit jurisdiction includes all unincorporated areas of Baldwin County..."<sup>1</sup>
- Baldwin County adopted the 2012 version of the International Code Council (ICC) group of model building codes on January 17, 2012.
- Baldwin County rescinded the 2012 versions of the ICC codes and adopted the 2018 versions effective May 21, 2019.<sup>2</sup> This code grouping includes the 2018 version of the International Residential Code (IRC).
- It is likely that homes currently under construction in February 2021 were permitted after May 2019. Thus, the 2018 IRC and the 2018 Baldwin County supplemental code would be expected to apply.
- The 2018 IRC references the 2014 editions of *Building Code Requirements for Structural Concrete* (ACI 318-14) and *Residential Code Requirements for Structural Concrete* (ACI 332-14), both published by the American Concrete Institute.

<sup>1</sup> <https://baldwincountyal.gov/departments/building-inspection>, accessed January 21, 2021

<sup>2</sup> Resolution #2019-075 dated May 21, 2019



## DOCUMENT 4

Mr. David L. Sheller  
Turnberry Crossing Investigation  
CTLGroup Project No. 000108

March 18, 2021  
Page 2 of 5

- We would expect a competent engineered design to prescribe details in conformance with ACI standards such as ACI 318 and ACI 332.
- CTLGroup believes the reinforcing placement and subgrade conditions visible during our inspection on February 9, 2021 represented the "finished" condition. In particular, workers had moved on to adjacent foundation sites and components including steel reinforcing, tie-down straps, bar supports, vapor barrier, and formwork had already been installed.
- CTLGroup understands that your office has requested permit drawings for these developments, but local permitting authorities have not released the documents because of reported copyright restrictions. Permit drawings could confirm which accepted ACI standards were adopted in the design of the foundation systems.

Based on our work to date CTLGroup has developed the following preliminary findings related to the development at Turnberry Crossing:

- ACI 318-14 Article 20.6.1.3.1 requires that embedded steel reinforcement where concrete is cast against and permanently exposed to earth have clear cover of three inches (three inches of concrete between the ground surface and the reinforcing).<sup>3</sup> Typical concrete tolerances allow a reduction for clear cover of only  $\frac{3}{8}$  inch.<sup>4</sup> However, many of the thickened slab edge reinforcing bars and welded wire fabric (WWF) reinforcing sheets were found to have clear cover of zero (Figures 4 and 5); reinforcement was in contact with the vapor barrier material or earth. Failure to encapsulate reinforcing and to provide sufficient cover would be expected to diminish the durability and service life of the foundation system and result in premature deterioration.
- ACI 318-14 Article 25.5.4 prescribes minimum lap lengths for plain wire WWR. The Concrete Reinforcing Specification Institute (CRSI) also recommends the use of WWF fabric for temperature and shrinkage crack control.<sup>5</sup> Depending on the design details, ACI 318-14 Article 25.5.4.1 may apply which requires a lap length of one cross wire spacing plus two inches. However, the WWF fabric was typically lapped only one crosswire space (Figure 6). Failure to achieve sufficient lap lengths would be expected to degrade the reinforcement's ability to control concrete floor cracks.
- ACI 318-14 Article 26.6.2.2(a) requires that embedded reinforcement be adequately supported before concrete placement.<sup>6</sup> CRSI also recommends that WWF be sufficiently stiff to remain in position during concrete placement.<sup>7</sup> However, WWF bar chairs were infrequently installed and the WWF sheets were regularly deformed downward and in contact with the base layer<sup>8</sup> (Figure 7). Supporting devices for reinforcing bars in downturned perimeter footings were similarly infrequently installed, or absent. Failure to properly position and support the reinforcing would be expected to diminish the durability and service life of the foundation, degrade the reinforcement's ability to control concrete floor cracks, and affect the structural performance of the footings.

<sup>3</sup> ACI 332-14 Article 5.6 provides a similar requirement for concrete cover and tolerance.

<sup>4</sup> *Standard Tolerances for Concrete Construction and Materials*, ACI-117

<sup>5</sup> CRSI Engineering Data Report No. 37 – *Reinforcing Steel in Slabs on Grade*

<sup>6</sup> ACI 332-14 Article 10.6.1 provides a similar requirement for supporting reinforcement.

<sup>7</sup> IRC 2018 R506.2.4 requires that WWF be placed between the center to upper one third of the slab for concrete floors on ground.

<sup>8</sup> *Guide to Design of Slabs-on-Ground*, ACI-360, Chapter 4, Fig. 4,1



## DOCUMENT 4

Mr. David L. Sheller  
Turnberry Crossing Investigation  
CTLGroup Project No. 000108

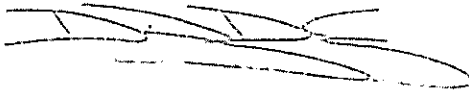
March 18, 2021  
Page 3 of 5

- ACI 332-14 Article 6.2.4 requires areas prepared for the placement of concrete shall be free of debris and contaminants. Such areas shall also be free of water. Additionally, ACI 332-14 Article 4.2.4 requires at the time concrete is placed, reinforcement shall be free of materials deleterious to development of bond strength between the reinforcement and the concrete. Several areas of the vapor barrier were contaminated with debris, soil, and water (Figures 2, 3, 4, 7, and 8).
- ACI-117 tolerances allow slab thickness to be reduced by up to  $\frac{1}{4}$  inch and increased up to  $\frac{3}{8}$  inch. Accepted industry recommendations<sup>9</sup> for base materials recommend conformance with ACI 117. However visible base layer surfaces exhibited widespread surface elevation variations measuring up to approximately four inches (Figure 8). This condition is not consistent with expected and necessary compaction and leveling work<sup>10</sup> and does not satisfy recognized industry standards or tolerances for construction. Failure to adequately compact base layer materials would be expected to cause settlement and failure to level base layer materials would be expected to contribute to crack formation.

We have endeavored to accurately and thoroughly present each area of concern identified during our site observations in accordance with current standards of professional practice. We reserve the right to modify this report and its opinions based on additional information as it becomes available.

We sincerely appreciate the opportunity to be of service and look forward to assisting you in this matter.

Sincerely,



David Drengenberg P.E. (AL)  
Senior Engineer & Group Director  
Structural Engineering & Advanced Mechanics  
[DDrengenberg@CTLGroup.com](mailto:DDrengenberg@CTLGroup.com)  
Direct: (847) 972-3064  
Cell: 847-280-0220

<sup>9</sup> *Guide to Concrete Floor and Slab Construction*, ACI 302.1R, Article 6.1.3

<sup>10</sup> ACI 332-14 Article 10.2 requires fill be "compacted to provide uniform support of the slab."



DOCUMENT 4

Mr. David L. Sheller  
Turnberry Crossing Investigation  
CTLGroup Project No. 000108

March 18, 2021  
Page 4 of 5

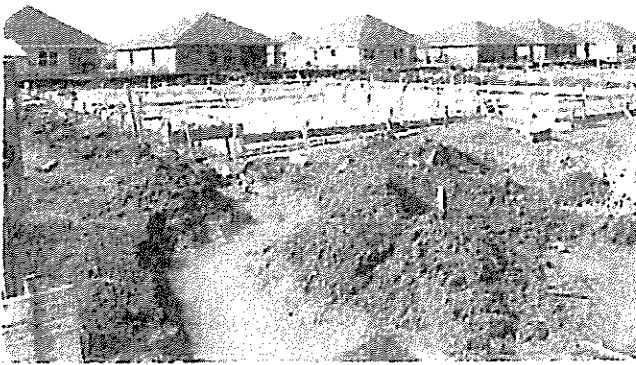


Figure 1: Foundation construction area



Figure 2: General construction condition

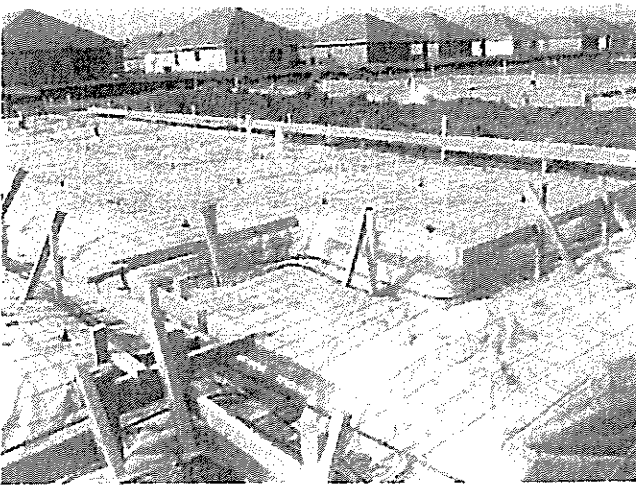


Figure 3: General construction condition

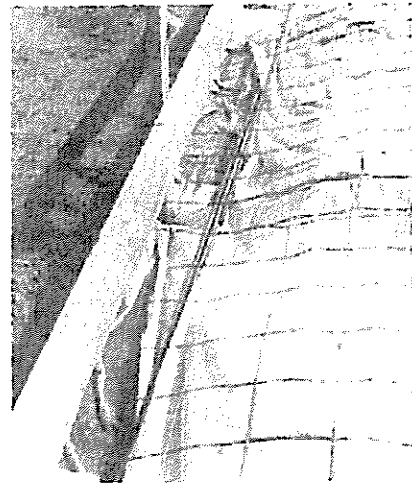


Figure 4: Edge bars and WWF in contact with vapor barrier



DOCUMENT 4

Mr. David L. Sheller  
Turnberry Crossing Investigation  
CTLGroup Project No. 000108

March 18, 2021  
Page 5 of 5

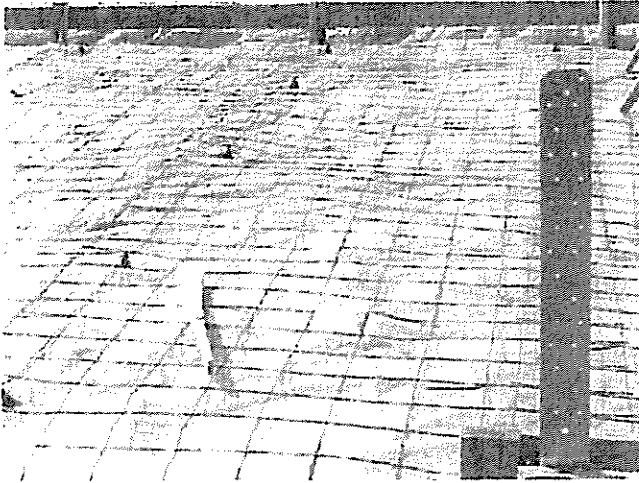


Figure 5: WWF generally in contact with vapor barrier

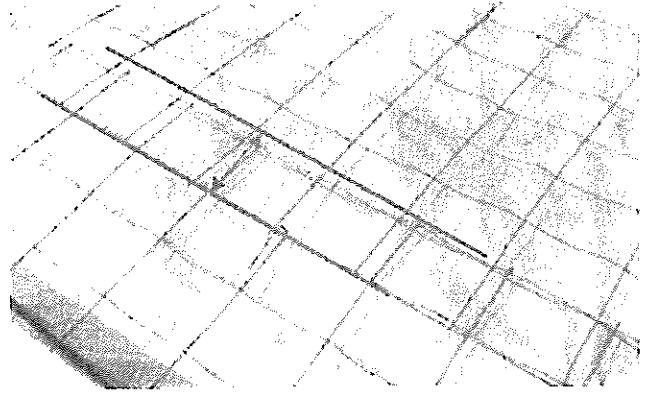


Figure 6: Single wire lap length

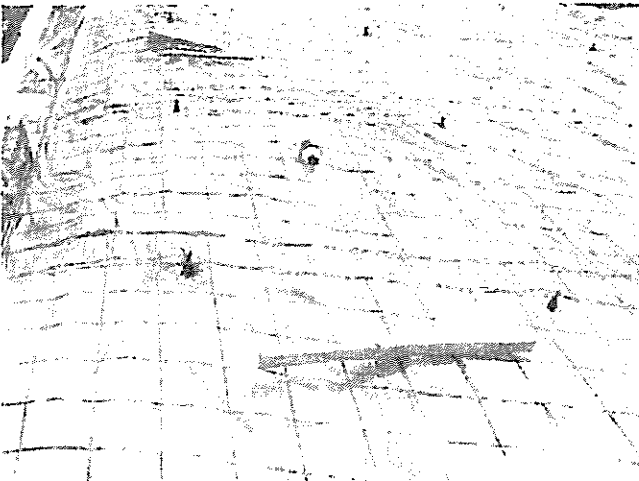


Figure 7: Infrequent WWF supports (black chairs),  
contamination, and bars in contact with base

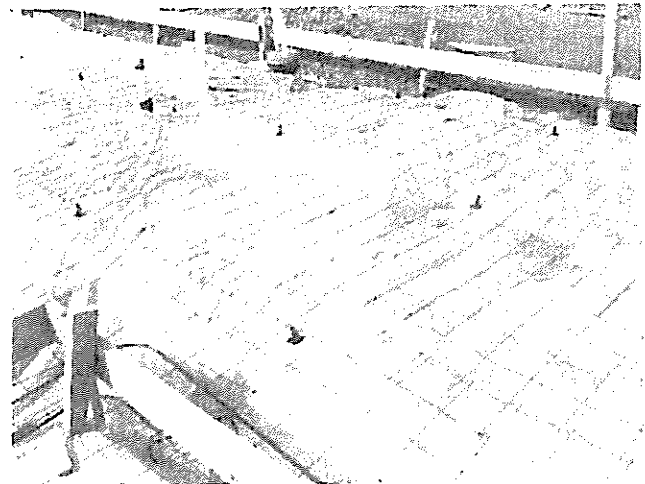


Figure 8: Base layer elevation variations

DOCUMENT 26



DOCUMENT 5

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CIRCUIT COURT OF  
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**WILKINS, BANKESTER, BILES & V**  
A PROFESSIONAL ASSOCIATION  
**LAWYERS**

201 E. Second Street  
Post Office Box 400  
Bay Minette, Alabama 36507  
Telephone (251) 937-7024  
Fax (251) 937-6190



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11/9/2021 9:40 PM  
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BALDWIN COUNTY, ALABAMA  
JODY L. WISE, CLERK

TAYLOR D. WILKINS, JR.  
MARION E. WYNNE, JR.  
MARCUS E. MCDOWELL  
J. THOMAS PILCHER, IV  
N. TREY CANIDA

FAIRHOPE OFFICE  
221 Fairhope Ave  
Post Office Box 1367  
Fairhope, Alabama 36533  
Telephone (251) 928-1915  
Fax (251) 928-1967

CLAUDE E. BANKESTER (1928-1993)  
KREG L. MORRIS (1969-2001)  
BAYLESS E. BILES (Retired, 2015)

October 12, 2021

Bethel Engineering  
Attn: Robert M. Galloway  
3263 Cottage Hill Road  
Mobile, Alabama 36606

*Via Hand Delivery:*

3233 Executive Park Circle  
Mobile, Alabama. 36606

**RE: Notice of violations with respect to the Alabama Deceptive Trade Practices Act**

To Whom it May Concern:

My firm, along with David Sheller and the Sheller law Firm PLLC, have the pleasure of representing sixty-one (61) home owners all within Baldwin County, Alabama that have purchased homes built by DR Horton. At the time of closing, all of these homeowners were assured they were purchasing a "gold fortified" home. Upon information and belief, this was marketed to each homeowner, and each homeowner does in fact have a gold fortified certificate. In reality, each of these homes are not gold fortified. Attached hereto to this letter is the findings of CTL Group, Intertek and Team Complete. Within those reports you will see that the homes tested were diverse in their region of the County, but similar in that they shared similar defects. Not a single home inspected meets the gold fortification standards outlined in the Insurance Institute for Business and Home Safety (IBHS) Fortified Home Technical Home Requirements (Attached hereto for your convenience). Those deficiencies include, but are not limited to:

- a) Windows do not meet standards. Installed windows are non-impact. Additionally, of the windows tested, the water and air filtration ratings are not to satisfactory requirements.
- b) Roof bracings and strappings are deficient and not to standards required as noted in the CTL Group Report and inspection reports by Team Complete.

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## DOCUMENT 5

October 12, 2021

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DR Horton; Notice of Violations of DTPA

- c) Fasteners for roof underlayments are deficient and not to standards required as noted in the CTL Group Report and inspection reports by Team Complete.
- d) The foundation sites are not properly prepped, or graded. As such, foundations do not meet the code requirements. Further, the foundations which have been inspected provide that the mesh, or welded wire fabric (WWF), is not properly placed; there is a failure to maintain consistent slab thickness; lack of base material compaction; poor base material elevation controls; improperly installed foundation anchors and post-installed repair anchors (often being visible from outside the foundation) as noted in the CTL Group Report and inspection reports by Team Complete.
- e) Fasteners for vinyl siding are deficient and not to standards required as noted in the CTL Group Report and inspection reports by Team Complete.
- f) Bracing of gable end walls are deficient and not to standards required as noted in the CTL Group Report and inspection reports by Team Complete.
- g) Varying other Baldwin County and municipal county code violations which would inhibit the homes from becoming code compliant (for example, weep holes not being adequately placed, foundation being too low to grade, flashing not being installed, etc.).

In multiple homes we have noted that flashing and Tyvek wrap has not been properly installed. At this time, we have only destructively tested one home, but in that home, we found the brick was not tied down in the areas removed, the Tyvek wrap was not properly tucked in the window (causing water to access the interior of the home), the Tyvek wrap and the flashings were situated in such a manner that would actually accumulate and hold water against the wood frame, and the brick mortar was back filed to such an extent that water could not be released through weep holes. We believe this will be found in each home.

In addition to the reports noted, I have included photographs and inspection reports from Team Complete for each of the sixty-one (61) home owners. These reports detail the issues noted above and list the repairs for each home necessary to bring the home within the gold fortified standards, and would also bring them compliant with municipal and county construction ordinances as well.

Alabama, as a State Legislature, acknowledged that consumers, such as our clients, need protection for public health, welfare and interest. And as such, the Deceptive Trade Practices Act was codified (Code of Alabama, 1975, Section 8-19-1, *et. seq.*). Under the statute, conduct such as yours, is an unlawful trade practice. Here, DR Horton marketed and advertised these houses to be gold fortified and compliant with county and municipal construction ordinances. These practices are violative of Section 8-19-5, (2), (5) and (7), which states:

"The following deceptive acts or practices in the conduct of any trade or commerce are hereby declared to be unlawful:

- (2) Causing confusion or misunderstanding as to the source, sponsorship, approval, or certification of goods or services.



October 12, 2021  
 DR Horton; Notice of Violations of DTPA

Page 3 of 5

(5) Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or qualities that they do not have or that a person has sponsorship, approval, status, affiliation, or connection that he or she does not have.

(7) Representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another.”

Code of Alabama, 1975, Section 8-19-5.

Pursuant to Section 8-19-10, a citizen has a private right of action for such violations. Section (e) states that notice must be given “at least 15 days prior to the filing of any action under this section...”. (Code of Alabama, 1975, Section 8-19-10(e)). Please understand, this letter is being written to provide the notice described in section (e). Further, each of our sixty-one (61) clients intend to bring an action in the event this demand is rejected within fifteen (15) days from demand.

The damages for which one can receive in a private right of action are detailed in Section 8-19-10(a)(1)-(3), which provides:

“(a) Any person who commits one or more of the acts or practices declared unlawful under this chapter and thereby causes monetary damage to a consumer, and any person who commits one or more of the acts or practices declared unlawful in subdivisions (19) and (20) of Section 8-19-5 and thereby causes monetary damage to another person, shall be liable to each consumer or other person for:

(1) Any actual damages sustained by such consumer or person, or the sum of \$100, whichever is greater; or

(2) Up to three times any actual damages, in the court's discretion. In making its determination under this subsection, the court shall consider, among other relevant factors, the amount of actual damages awarded, the frequency of the unlawful acts or practices, the number of persons adversely affected thereby and the extent to which the unlawful acts or practices were committed intentionally; and

(3) In the case of any successful action or counterclaim to enforce the foregoing liability or in which injunctive relief is obtained, the costs of the action or counterclaim, together with a reasonable attorney's fee. On a finding by the court that an action or counterclaim under this section was frivolous or brought in bad faith or for the purpose of harassment, the court shall award to the defendant (or counterclaim-defendant) reasonable attorney's fees and costs.”

Code of Alabama, 1975, 8-19-10(a)(1)-(3).

Within our clients, we have several factors that are creating damages. Their homes value is diminished due to the repair issues noted in the CTL report and Team Complete Inspections Reports. Gold Fortified homes in and of themselves have a value. Meaning, a gold fortified home is worth more than a non-gold fortified home. These homes automatically drop in value by losing that designation, and does so significantly. Additionally, there will be an increase in expenses associated with the home. For example, by the home not being gold fortified, home



## DOCUMENT 5

October 12, 2021

Page 4 of 5

DR Horton; Notice of Violations of DTPA

insurance will increase on each house by as much as thirty percent (30%) annually, if not more. The repair estimates range and are detailed on each Inspection Report attached. The total repair costs on the sixty-one (61) homes is Eleven Million, Five Hundred Seventy-Eight Thousand, Two Hundred Fifty-Seven Dollars and 80/100's (\$11,578,257.80).

As you know, these homes are being purchased by individuals who do not have the spare monies to pay for this type of repair. As such, the anxiety of this situation has been difficult to say the least. They are being forced to live in homes that have mildewed, had water intrusion, water drainage issues, and much more. Living with this, and the fear of not being able to afford the repairs is something that the parties could recover for under mental anguish.

As a citizen of Baldwin County, seeing the results of this inspection have been concerning and disappointing. It appears these homes, similar to other neighborhoods in other states that DR Horton constructed, are being built with little care and concern. Therefore, they are going to have significant structural and repairs in the near future. Many of these home owners will not be able to afford such repairs, and therefore, we will have major safety issues and future community blight. In the event this demand is rejected, in accordance with the statutes, we will be pursuing an injunction to halt construction of homes that are not compliant with Gold Fortification Standards and county and municipal construction codes. This will be done to get your construction practices in conformance with the promises that your company is making to each home owner.

With respect to this demand, we have reviewed each homeowner to ensure they are eligible to bring claims under the Deceptive Trade Practices Act (DTPA). I would ask you to take note that other construction defect claims are viable to bring in addition to the DTPA claim that could potentially allow for additional damages, like mental anguish (breach of contract). However, for the purposes of this demand, we have not included mental anguish.

In an attempt to streamline this, I am making an offer that would allow for settlement of all sixty-one (61) homeowners at a single time. It would allow for DR Horton to make a payment, and my firm would handle the transaction and transfer of funds to each individual homeowner. In doing so, we would request the full balance of repair estimates, which equates to Eleven Million, Five Hundred Seventy-Eight Thousand, Two Hundred Fifty-Seven Dollars and 80/100's (\$11,578,257.80). In an effort to promote compromise, we would only ask for two (2) times those damages, as opposed to the three (3) we would be capable of recovering, which equates to Twenty-Three Million, One Hundred Fifty-Six Thousand, Five Hundred Fifteen Dollars and 60/100's (\$23,156,515.60). Finally, as we would be entitled to attorney's fees, we would ask for those in the amount of Twelve Million, One Hundred Fifty-Seven Thousand, One Hundred Seventy dollars and 70/100's (\$12,157,170.70). The sum total of all funds would be Forty-six Million, Eight Hundred Ninety-One Thousand, Nine Hundred Forty-Four Dollars and 10/100's (\$46,891,944.10).

Please note that Section (e) of Code of Alabama, 1975, Section 8-19-10, provides that a response accepting, tendering an offer, or rejection is due within fifteen (15) days of receipt of this letter.

I look forward to hearing from you.

Sincerely,

DOCUMENT 27



DOCUMENT 5

October 12, 2021  
DR Horton; Notice of Violations of DTPA

Page 5 of 5

WILKINS, BANKESTER, BILES & WYNNE

---

J. Thomas Pilcher IV

SHELLER LAW FIRM, PLLC

/s/David Sheller (with permission)  
David Sheller

Enclosures: Zip Drive containing above mentioned documents

DOCUMENT 27



State of Alabama Unified Judicial System Form C-34 Rev. 4/2017	<b>SUMMONS</b> <b>- CIVIL -</b>	<b>Court Case Number</b> 05-CV-2021-901218.00
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**IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA**  
**MICHAEL MORTON ET AL V. D.R. HORTON, INC. - BIRMINGHAM ET AL**

**NOTICE TO:** D.R. HORTON, INC., C/O CT CORPORATION 1999 BRYAN ST., STE. 900, DALLAS, TX 75201  
*(Name and Address of Defendant)*

THE COMPLAINT OR OTHER DOCUMENT WHICH IS ATTACHED TO THIS SUMMONS IS IMPORTANT, AND YOU MUST TAKE IMMEDIATE ACTION TO PROTECT YOUR RIGHTS. YOU OR YOUR ATTORNEY ARE REQUIRED TO FILE THE ORIGINAL OF YOUR WRITTEN ANSWER, EITHER ADMITTING OR DENYING EACH ALLEGATION IN THE COMPLAINT OR OTHER DOCUMENT, WITH THE CLERK OF THIS COURT. A COPY OF YOUR ANSWER MUST BE MAILED OR HAND DELIVERED BY YOU OR YOUR ATTORNEY TO THE PLAINTIFF(S) OR ATTORNEY(S) OF THE PLAINTIFF(S),  
 JOSEPH THOMAS PILCHER  
*(Name(s) of Attorney(s))*

WHOSE ADDRESS(ES) IS/ARE: PO Box 400, Bay Minette, AL 36507  
*(Address(es) of Plaintiff(s) or Attorney(s))*

THE ANSWER MUST BE MAILED OR DELIVERED WITHIN 30 DAYS AFTER THIS SUMMONS AND COMPLAINT OR OTHER DOCUMENT WERE SERVED ON YOU OR A JUDGMENT BY DEFAULT MAY BE RENDERED AGAINST YOU FOR THE MONEY OR OTHER THINGS DEMANDED IN THE COMPLAINT OR OTHER DOCUMENT.

**TO ANY SHERIFF OR ANY PERSON AUTHORIZED BY THE ALABAMA RULES OF CIVIL PROCEDURE TO SERVE PROCESS:**

☐ You are hereby commanded to serve this Summons and a copy of the Complaint or other document in this action upon the above-named Defendant.

☒ Service by certified mail of this Summons is initiated upon the written request of MORTON MICHAEL  
*(Name(s))*  
 pursuant to the Alabama Rules of the Civil Procedure.

12/06/2021 /s/ JODY L. WISE By: \_\_\_\_\_  
*(Date)* *(Signature of Clerk)* *(Name)*

☒ Certified Mail is hereby requested. /s/ JOSEPH THOMAS PILCHER  
*(Plaintiff's/Attorney's Signature)*

**RETURN ON SERVICE**

☐ Return receipt of certified mail received in this office on \_\_\_\_\_  
*(Date)*

☐ I certify that I personally delivered a copy of this Summons and Complaint or other document to \_\_\_\_\_  
 \_\_\_\_\_ in \_\_\_\_\_ County,  
*(Name of Person Served)* *(Name of County)*

Alabama on \_\_\_\_\_  
*(Date)*

\_\_\_\_\_  
*(Type of Process Server)*

\_\_\_\_\_  
*(Server's Signature)*

\_\_\_\_\_  
*(Address of Server)*

\_\_\_\_\_  
*(Server's Printed Name)*

\_\_\_\_\_  
*(Phone Number of Server)*



State of Alabama Unified Judicial System Form C-34 Rev. 4/2017	<b>SUMMONS</b> <b>- CIVIL -</b>	<b>Court Case Number</b> 05-CV-2021-901218.00
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**IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA**  
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*(Name and Address of Defendant)*

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*(Name(s) of Attorney(s))*

WHOSE ADDRESS(ES) IS/ARE: PO Box 400, Bay Minette, AL 36507

*(Address(es) of Plaintiff(s) or Attorney(s))*

THE ANSWER MUST BE MAILED OR DELIVERED WITHIN 30 DAYS AFTER THIS SUMMONS AND COMPLAINT OR OTHER DOCUMENT WERE SERVED ON YOU OR A JUDGMENT BY DEFAULT MAY BE RENDERED AGAINST YOU FOR THE MONEY OR OTHER THINGS DEMANDED IN THE COMPLAINT OR OTHER DOCUMENT.

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*(Name(s))*

12/06/2021                      /s/ JODY L. WISE                      By: \_\_\_\_\_  
*(Date)*                                      *(Signature of Clerk)*                                      *(Name)*

☒ Certified Mail is hereby requested.                      /s/ JOSEPH THOMAS PILCHER  
*(Plaintiff's/Attorney's Signature)*

**RETURN ON SERVICE**

☐ Return receipt of certified mail received in this office on \_\_\_\_\_  
*(Date)*

☐ I certify that I personally delivered a copy of this Summons and Complaint or other document to \_\_\_\_\_  
 \_\_\_\_\_ in \_\_\_\_\_ County,  
*(Name of Person Served)*                                      *(Name of County)*

Alabama on \_\_\_\_\_  
*(Date)*

\_\_\_\_\_  
*(Type of Process Server)*

\_\_\_\_\_  
*(Server's Signature)*

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*(Server's Printed Name)*

\_\_\_\_\_  
*(Phone Number of Server)*





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CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA  
JODY L. WISE, CLERK

**IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA**

MICHAEL MORTON, et al.,

Plaintiffs,

vs.

D.R. HORTON, INC., D. R. HORTON-  
BIRMINGHAM, BETHEL  
ENGINEERING, et al.,

Defendants.

CIVIL ACTION NO.

CV-2021-901218

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**NOTICE OF APPEARANCE**

---

W. Bradley Smith of the law firm HAND ARENDALL HARRISON SALE LLC files this  
Notice of Appearance as counsel of record for D.R. Horton, Inc.-Birmingham.

Respectfully submitted,

/s/ W. Bradley Smith

HENRY T. MORRISSETTE (MOR074)

W. BRADLEY SMITH (SMI278)

*Attorneys for Defendant D.R. Horton, Inc. -  
Birmingham*

**OF COUNSEL:**

HAND ARENDALL HARRISON SALE LLC

Post Office Box 1499

Fairhope, Alabama 36533

Telephone: (251) 990-0079

E-mail: [bmsmith@handfirm.com](mailto:bmsmith@handfirm.com)



OF COUNSEL:

HAND ARENDALL HARRISON SALE LLC  
Post Office Box 123  
Mobile, Alabama 36601  
Telephone: (251) 432-5511  
E-mail: [hmorrissette@handfirm.com](mailto:hmorrissette@handfirm.com)

**CERTIFICATE OF SERVICE**

I hereby certify that, on December 13, 2021, I electronically filed the foregoing with the Clerk of the Court via Alafile which will send notification of such filing to the following:

J. Thomas Pilcher, IV, Esq.  
WILKINS, BANKESTER, BILES  
& WYNNE, P.A.  
P.O. Box 400  
Bay Minette, AL 36507

Steven D. Hazelwood, Esq.  
HAZELWOOD FIRM, LLC  
440 River Route  
Magnolia Springs, AL 36555

David L. Sheller, Esq.  
SHELLER LAW FIRM, PLLC  
360 FM 1959  
Houston, TX 77034

/s/ W. Bradley Smith





## AlaFile E-Notice

05-CV-2021-901218.00

To: WILLIAM BRADLEY SMITH  
bsmith@handarendall.com

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# NOTICE OF ELECTRONIC FILING

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IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA

MICHAEL MORTON ET AL V. D.R. HORTON, INC. - BIRMINGHAM ET AL  
05-CV-2021-901218.00

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CIRCUIT COURT CLERK  
BALDWIN COUNTY, ALABAMA  
312 COURTHOUSE SQUARE  
SUITE 10  
BAY MINETTE, AL, 36507

251-937-9561  
jody.wise@alacourt.gov





## AlaFile E-Notice

05-CV-2021-901218.00

To: D.R. HORTON, INC. - BIRMINGHAM (PRO SE)  
2 N. JACKSON STREET  
SUITE 605  
MONTGOMERY, AL, 36104-0000

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## NOTICE OF ELECTRONIC FILING

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IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA

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251-937-9561  
jody.wise@alacourt.gov





## AlaFile E-Notice

05-CV-2021-901218.00

To: D.R. HORTON, INC. (PRO SE)  
C/O CT CORPORATION  
1999 BRYAN ST., STE. 900  
DALLAS, TX, 75201-0000

---

## NOTICE OF ELECTRONIC FILING

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IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA

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SUITE 10  
BAY MINETTE, AL, 36507

251-937-9561  
jody.wise@alacourt.gov





## AlaFile E-Notice

05-CV-2021-901218.00

To: BETHEL ENGINEERING, INC. (PRO SE)  
3263 COTTAGE HILL ROAD  
MOBILE, AL, 36606-0000

---

## NOTICE OF ELECTRONIC FILING

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IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA

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BAY MINETTE, AL, 36507

251-937-9561  
jody.wise@alacourt.gov





## AlaFile E-Notice

05-CV-2021-901218.00

To: PILCHER JOSEPH THOMAS IV  
tpilcher@wbbwlaw.com

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# NOTICE OF ELECTRONIC FILING

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IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA

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SUITE 10  
BAY MINETTE, AL, 36507

251-937-9561  
jody.wise@alacourt.gov





## AlaFile E-Notice

05-CV-2021-901218.00

To: SELLER DAVID LEIGH  
david@shellerlawfirm.com

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# NOTICE OF ELECTRONIC FILING

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IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA

MICHAEL MORTON ET AL V. D.R. HORTON, INC. - BIRMINGHAM ET AL  
05-CV-2021-901218.00

The following NOTICE OF APPEARANCE was FILED on 12/13/2021 9:19:35 AM

Notice Date: 12/13/2021 9:19:35 AM

JODY L. WISE  
CIRCUIT COURT CLERK  
BALDWIN COUNTY, ALABAMA  
312 COURTHOUSE SQUARE  
SUITE 10  
BAY MINETTE, AL, 36507

251-937-9561  
jody.wise@alacourt.gov





## AlaFile E-Notice

05-CV-2021-901218.00

To: HAZELWOOD STEVEN DOUGLAS  
shazelwood@hazelwoodfirm.com

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Judge: JODY W. BISHOP

To: SMITH WILLIAM BRADLEY  
bsmith@handarendall.com

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CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA  
JODY L. WISE, CLERK

## IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA

MORTON MICHAEL,	)	
MORTON LISA,	)	
SMITH JEREMY,	)	
SMITH LINDSEY ET AL,	)	
Plaintiffs,	)	
	)	
V.	)	Case No.: CV-2021-901218.00
	)	
D.R. HORTON, INC. - BIRMINGHAM,	)	
D.R. HORTON, INC.,	)	
BETHEL ENGINEERING, INC.,	)	
Defendants.	)	

### STATUS / PRE-TRIAL ORDER

#### 1. DISCOVERY

Parties shall comply with ARCP 5(d) as to non-filing of discovery. Discovery shall not be attached to motions to compel unless the motion applies to a specific discovery request. Pleadings, previously filed documents and legal authorities shall not be filed with motions.

#### 2. STATUS CONFERENCE DATE

This case is set for a pre-trial / status conference on the **May 2, 2022, at 9:00 a.m.** at the Baldwin County Courthouse in Bay Minette, courtroom #8. AN ATTORNEY FOR EACH PARTY WITH KNOWLEDGE OF THE CASE MUST ATTEND **UNLESS** THE PARTIES AGREE ON A JOINT PROPOSED SCHEDULING ORDER.

#### **IF THE PARTIES AGREE, THE PROPOSED JOINT SCHEDULING ORDER MAY BE FILED ELECTRONICALLY**

- a) as a proposed order;
- b) at least 3 working days prior to the hearing date;
- c) order must include all conditions as set out in this Court's standard scheduling order (To view scheduling order and available court dates go to <http://28jc.alacourt.gov/jwb.htm>);
- d) shall include a discovery cut off date, including all dates for written discovery requests, depositions, and expert disclosures.

If an agreement cannot be reached prior to the above date, then attorneys for all parties shall appear at the conference hearing. Any attorney failing to appear without



due cause shall waive his/her position as to discovery and trial dates.

A trial date will be set by the Court upon receipt of the proposed order or at the conference.

Once the trial date is set, the Court will not consider a continuance, except in extraordinary circumstances.

### 3. MEDIATION

The Court recommends and encourages mediation. Request for mediation should be made to the Court in writing. The Court may, on its own initiative, order mediation in appropriate cases. The mediator shall schedule a conference, which shall be attended, in person, by the attorneys and parties, or, if insurance is involved, a representative of the insurer(s) with full and complete authority. The mediator shall notify the Court immediately of any person that does not comply with this Order.

### 4. MOTIONS

Non-Dispositive- The Court requires all parties to make every effort to resolve discovery issues prior to the filing of any motion to compel or request for sanctions.

ANY FILING AFTER 4:00 P.M. WILL NOT BE REVIEWED BY THE COURT UNTIL THE NEXT BUSINESS DAY.

### 5. OTHER

Any request for deviation from this Order shall not be permitted without written permission of this Court.

**DONE this 13<sup>th</sup> day of December, 2021.**

**/s/ JODY W. BISHOP**  
**CIRCUIT JUDGE**





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Judge: JODY W. BISHOP

To: PILCHER JOSEPH THOMAS IV  
tpilcher@wbbwlaw.com

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Judge: JODY W. BISHOP

To: SHELLER DAVID LEIGH  
david@shellerlawfirm.com

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Judge: JODY W. BISHOP

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DALLAS, TX, 75201-0000

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Judge: JODY W. BISHOP

To: BETHEL ENGINEERING, INC. (PRO SE)  
3263 COTTAGE HILL ROAD  
MOBILE, AL, 36606-0000

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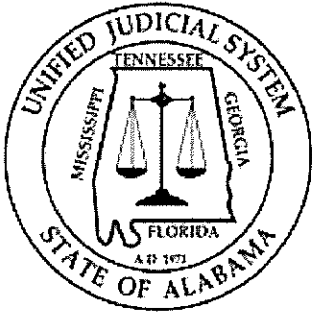
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To: MICHAEL ROBERT LUNSFORD  
mrl@Phm-law.com

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MICHAEL MORTON ET AL V. D.R. HORTON, INC. - BIRMINGHAM ET AL  
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JODY L. WISE, CLERK

**IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA**

**MICHAEL MORTON, et al.,**

**Plaintiffs,**

**v.**

**D.R. HORTON, INC., D.R.  
HORTON-BIRMINGHAM,  
BETHEL ENGINEERING,  
et al.,**

**Defendants.**

**CIVIL ACTION NO.:**

**CV-2021-901218**

**NOTICE OF SERVICE OF DISCOVERY DOCUMENTS**

TO: BALDWIN COUNTY CIRCUIT COURT CLERK

DATE OF SERVICE: December 14, 2021

Take notice that the undersigned has, by the AlaFile system this date, served on all counsel of record, the following:

(1) Notices of Taking Deposition of Plaintiffs, Michael Morton, Lisa Morton, Jeremy Smith, Lindsey Smith, Robert Blauner, Pamela L. Blauner, Kirk Toth, Herbert Roberson, Amanda Roberson, Lance Cole Slater, Troy Williams, Josh Baker, Robert Stanley Darbi Stanley, Shelby Douglas, John Bender, Tena Bender, Matthew Beal, Cheyenne Beal, Cecil Perry, Nancy Perry, Christopher Davis, Hannis Roberts, Carlis Lairson, Sheri Lairson, Jess Kalis, Kathy Kalis, Christi Dixon, Andrew Ray Merriweather, Heather Merriweather Geri Lynn McCane, Edward Mitchell, Sager J. Hamdan, Roy Ashton, Michelle Ashton, Sean Garrison, Patrick Callaghan, Liz Callaghan, Lauren Sumrall, Nicholas Hoots, Dan Hodson, Janet White, Heidi Davis, Nicholas West, Brenda Lynn Hinote, Roy Settles, Adam Cooley, Mark Vontroba, Christopher Lee Sanders, Chris Butler, Crystal Butler, George Messer, Kathleen Messer, Brent Parnell, Tammy Parnell, James Stewart, James Funderburg, Ariel Haley Funderburg, Nada Blamachan Permanand, Tim Kent, Stacie Kent, Timothy Gier, Michelle Gier, Rick Sullivan, Melissa Sullivan, Daniel Owsley, Christopher Taylor, Sharron Mattison, David Harrison. Roxanne Harrison, Sara Winchester, Terrie Owens, David Owens, John Bogl, Tiffany Bogl, Steve Wiger, Jerry Maddox, Loan M. Nguyen, James White, Tara White, Carlton Washington, Cody Miles, Victoria Miles Reed, Benjamin White Jacob Van Blake, Richard Harper, Cynthia Hintz, Todd Campbell.



Respectfully submitted,

*s/Michael R. Lunsford*

MICHAEL R. LUNSFORD (LUN006)

Attorney for Defendant, *Bethel Engineering*

Porterfield Harper Mills Motlow & Ireland, PA

22 Inverness Center Parkway, Suite 600

Birmingham, Alabama 35242

Telephone: 205-980-5000

Fax: 205-980-5001

E-mail: [mrl@phm-law.com](mailto:mrl@phm-law.com)

**CERTIFICATE OF SERVICE**

I hereby certify that on the 14<sup>th</sup> day of December, 2021, I electronically filed the foregoing with the Clerk of the Court using the AlaFile system which will send notification of such filing and/or by placing a copy in the U.S. Mail, first class postage pre-paid, and/or electronic mail to the following:

J. Thomas Pilcher, IV  
Wilkins, Bankester, Biles &  
Wynne, P.A.  
P.O. Box 400  
Bay Minette, AL 36507  
251-937-7024  
[tpilcher@wbbwlaw.com](mailto:tpilcher@wbbwlaw.com)

David L. Sheller  
Sheller Law Firm, PLLC  
360 FM 1959  
Houston, TX 77034  
832-841-1175  
[david@shellerlawfirm.com](mailto:david@shellerlawfirm.com)

Steven D. Hazelwood  
Hazelwood Firm, LLC  
440 River Route  
Magnolia Springs, AL 36555  
251-510-6969  
[Shazelwood@hazelwoodfirm.com](mailto:Shazelwood@hazelwoodfirm.com)

*s/Michael R. Lunsford*

OF COUNSEL





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mrl@Phm-law.com

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